IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 305

UNITED STATES OF AMERICA

—v.—

JOHN HEFFRON SISSON, JR.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

INDEX TO APPENDIX

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

CR68-237-W

THE UNITED STATES

vs.

JOHN HEFFRON SISSON, JR.

50 Appendix, USC 462—Military Selective Service Act, did fail to submit for induction (one count)

Docket Entries

DATE	
1968	
Sept 27	Indictment returned
Oct 7	WYZANSKI, CH.J. Appearance of John G.S. Flym for defendant, filed. Arraigned; pleads not guilty; October 14, 1968, file motions and inform Court if want jury trial. Released on personal recognizance.
21	Defendant's motion for discovery and inspection, filed. c/s
21	Defendant's motion to Dismiss Indictment, filed. c/s
21	Memorandum of points and authorities in support of motion to dismiss indictment filed.
Nov 4	WYZANSKI, CH.J. Hearing on defendant's motion to dismiss and motion for discovery; certain points agreed upon—further hearing scheduled for Monday 11/18/68 at 2PM.
20	Stenographic transcript of proceedings on November 4, 1968, filed.

DATE	
1968	
Nov 25	Defendant's supplemental memorandum in support of his motion to dismiss, filed. c/s
25	Government's memorandum of Law, filed. c/s
25	WYZANSKI, CH.J. OPINION, filed. ". . . . Because defendant Sisson seeks an adjudication of what is a positical question, his motion to dismiss the intictment is denied." Copy to Messrs Wall, Flym, West.
26	WYZANSKI, CH.J. OPINION, filed. ". . . . The motion to dismiss the indictment is again denied." Copy to Messrs Wall, Flym
Dec 3	WYZANSKI, Ch.J. ORDER entered: "This formal and binding order is a response to deft's counsel's informal letter dated November 27, 1968. The Court declines to modify its opinion of November 26 . . . ." Copy to Messrs Wall, Flym, and to WEST PUBLISHING.
11	WYZANSKI, CH.J. OPINION, filed. ". . . . In this case defendant is seeking, by tendering Professors Falk and Hoffman as witnesses, to broaden the defenses available in a trial which has constitutional implications. He seeks precisely the same latitude that in the 18th Century Erskine and Fox did in libel law. But if any such latitudinarian position is to be taken, it surely first should be sanctioned by the Supreme Court of the United States and not introduced in to law by a district judge." Copy to Messrs Flym, Wall, West Pub.
1969	
Jan 23	Motion for amendment to include statement prescribed by 28 USC 1292 (b) in certain opinions and an order denying defendant's motion to dismiss, filed. c/s

DATE		
1969		
Feb	5	WYZANSKI, CH.J. Motion for amendment to include statement, etc., denied.
Mar	14	See below
Mar	17	Appearance of Stanislaw R.J. Suchecki, Esq., for United States of America, filed.
	14	WYZANSKI, CH.J. Pretrial hearing on question of possible defenses to be raised by defendant at his trial—trial scheduled for March 17, 1969 postponed to Friday March 21, 1969.
	21	WYZANSKI, CH.J. Defendant set to the bar to be tried: defendant's request for voir dire of jurors and defendant's request filed. Jury empaneled, Robert Weiser (F); Court conducts interrogation of jurors; foreman sworn; balance of panel sworn; government open evidence; government rests; defendant begins; evidence; jury excused for conference at bench; jury returns to box; evidence; defense rests; oral motion for judgment of acquittal denied; arguments; CHARGE; committed at 4:20 PM; jury returns at 4:40 PM with verdict of guilty; jury polled at request of defendant; verdict is recorded; jury discharged.
	26	Defendant's motion in arrest of judgment, filed c/s
	28	Defendant's amended motion in arrest of judgment, filed. c/s
Apr	1	WYZANSKI, CH.J. Defendant with his counsel and Government counsel present; Court reads its Opinion granting defendant's motion in arrest of judgment, pursuant to Rule 34 of Federal Rules of Criminal Procedure; excerpts quoted below: "In the words of Rule 34, the indictment of SISSON 'does not charge an offense'."

"This court's 'decision arresting a judgment of conviction for insufficiency of the indictment . . .

DATE

1969

Apr 1—(Cont.) is based upon the invalidity . . . of the statute upon which the indictment is founded' within the meaning of those phrases as used in 18 U.S.C. Section 3731. *U.S.* v. *Green*, 350 U.S. 415 (1965); *U.S.* v. *Bramblett*, 348 U.S. 503 504 (1955). Therefore, 'an appeal my be taken by and on behalf of the United States . . . direct to the Supreme Court of the United States.'

"TO GUARD AGAINST MISUNDERSTANDING, THIS COURT HAS *NOT* RULED THAT:

"(1) THE GOVERNMENT HAS NO RIGHT TO CONDUCT VIETNAM OPERATIONS; OR

(2) THE GOVERNMENT IS USING UNLAWFUL METHODS IN VIETNAM; OR

(3) THE GOVERNMENT HAS NO POWER TO CONSCRIPT THE GENERALITY OF MEN FOR COMBAT SERVICE; OR

(4) THE GOVERNMENT IN A DEFENSE OF THE HOMELAND HAS NO POWER TO CONSCRIPT FOR COMBAT SERVICE ANYONE IT SEES FIT; OR

(5) THE GOVERNMENT HAS NO POWER TO CONSCRIPT CONSCIENTIOUS OBJECTORS FOR NONCOMBAT SERVICE."

"INDEED THE COURT ASSUMES WITHOUT DECIDING THAT EACH ONE OF THOSE PROPOSITIONS STATES THE EXACT REVERSE OF THE LAW."

"ALL THAT THIS COURT DECIDES IS THAT AS A SINCERE CONSCIENTIOUS OBJECTOR SISSON CANNOT CONSTITUTIONALLY BE SUBJECTED TO MILITARY ORDERS (NOT REVIEWABLE IN A UNITED STATES CONSTITUTIONAL COURT), WHICH MAY REQUIRE

DATE	
1969	
Apr 1—(Cont.)	HIM TO KILL IN THE VIETNAM CONFLICT." Court orders this decision and this court's order granting defendant SISSON'S motion in arrest of judgment entered forthwith.
Apr 3	Defendant's amendment to amended motion in arrest of judgment, filed. c/s
3	WYZANSKI, CH.J. Re: amended motion to arrest of judgment filed this day, "motion granted NUNC PRO TUNC as of 1 April, C.E. Wyzanski, Jr. 3 April 1969 4 P.M."
9	Stenographic transcript of proceedings before Judge Wyzanski on March 21, 1969, filed.
23	Govt's notice of appeal filed. Copy to John G.S. Flym, Esq.
May 2	Statement of docket entries sent to the Supreme Court.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

INDICTMENT

The grand jury charges:

That on or about April 17, 1968, at Boston, in the District of Massachusetts, JOHN HEFFRON SISSON, JR., of Lincoln, in the District of Massachusetts, did unlawfully, knowingly and wilfully fail and neglect and refuse to perform a duty required of him under and in the execution of the Military Selective Service Act of 1967 and the rules, regulations and directions duly made pursuant thereto, particularly 32 Code of Federal Regulations 1632.14, in that he did fail and neglect and refuse to comply with an order of his local draft board to submit to induction into the armed forces of the United States; in violation of Title 50, Appendix, United States Code, Section 462.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

Defendant's Motion for Discovery and Inspection

Pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, defendant moves that this Court order the attorney for the government to permit the defendant to inspect and copy or photograph the following books, papers and documents which are within the possession, custody or control of the government:

1. The Local Board Actions and Minutes (hereinafter referred to as SSS Form No. 112) for any meeting of Local Board No. 114 held on or about November 20, 1967 at which defendant was reclassified 1-A.

2. The SSS Form No. 112 for any meeting of Local Board No. 114 held on or about March 18, 1968, at which time an Order to Report for Induction (SSS Form No. 252) was prepared for defendant.

3. Any and all other SSS Forms No. 112 for any and all meetings of Local Board No. 114, held at any time from November 20, 1967 through March 18, 1968, if at said meeting or meetings said Local Board considered and/or decided any matter directed specifically to the defendant or the defendant's selective service classification.

4. Any and all correspondence from Local Board No. 114 notifying, and/or providing instructions to, defendant about the meetings referred to in items 1, 2 and 3 above.

5. The Classification Records (SSS Form No. 102) for all registrants of Local Board No. 114 born during the years 1942, 1943, 1944, 1945 and 1946, inclusive.

6. The Record of Delinquents (SSS Form No. 302) in effect on the date of defendant's Order to Report for Induction on or about March 18, 1968.

7. The Notice of Call on State (SSS Form No. 200) and the Notice of Call on Local Board No. 114 (SSS Form No. 201) in effect on or about March 18, 1968.

8. The papers or documents which provide the following information with respect to each member of Local Board No. 114:

a. Name
b. Address
c. Age
d. Date of appointment to Local Board No. 114
e. Military status, including reserve or retired status
f. Citizenship

9. A complete set of the so-called "Local Board Memorandums" issued by the Director of Selective Service which were in effect on or about March 18, 1968.

10. The set of Forms in effect on or about March 18, 1968.

The books, documents and records described above are material to the preparation of defendant's defense:

A. The records sought in items 1, 2 and 3, which are required to be kept by 32 C.F.R. § 1604.58, are material to ascertain the propriety of actions affecting the defendant taken by Local Board No. 114, for instance whether said actions are in accordance with the provisions of 32 C.F.R. Parts 1632 and 1623. See e.g. *Brede* v. *United States*, 396 F.2d 155 (9th Cir. 1968); *United States* v. *Walsh*, 279 F. Supp. 115 (D. Mass. 1968).

B. The records sought in Item 4 are material to ascertain whether the requirements of due process have been met. See e.g. *United States* v. *Thompson*, Cr. No. 66-309-W (D. Mass. Dec. 4, 1967).

C. The records sought in items 5, 6 and 7, which are required to be kept by 32 C.F.R. §§ 1621.6; 1642.44; 1631.6 and 1631.7, are material to ascertain the propriety of the timing of defendant's Order to Report for Induction. See e.g. *United States* v. *Lybrand*, 279 F. Supp. 74 (E.D.N.Y. 1967).

D. The records sought in item 8 are material to ascertain whether the members of Local Board No. 114 meet the qualifications prescribed by 32 C.F.R. § 1604.52.

E. The records sought in items 9 and 10 include instructions issued to all Local Boards by the Director of Selective Service pursuant to 32 C.F.R. § 1604.1(b) and Forms which by 32 C.F.R. § 1606.51 are made part of the selective service regulations. These records are not printed in the Federal Register but are required to be available for inspection and copying under Title 5 U.S.C. § 552.

Respectfully submitted,

/s/ John G. S. Flym
JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

Motion to Dismiss Indictment

Pursuant to Rule 12 of the Federal Rules of Criminal Procedure, defendant moves this Court to dismiss the indictment returned against him on the ground that his refusal to submit to induction into the armed forces was justified because:

1. the government's military involvement in Vietnam violates international law.
2. he reasonably believed the government's military involvement in Vietnam to be illegal.
3. the Military Selective Service Act of 1967, Title 50 App. U.S.C. §§ 451 et seq., and the regulations adopted pursuant thereto, violate the Constitution of the United States.

The defendant requests a hearing on this motion.

Respectfully submitted,

/s/ John G. S. Flym
JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS INDICTMENT

1. *The Government's Military Involvement in Viet Nam Violates International Law.*

The illegality of the United States military involvement in the Viet Nam conflict is discussed in part 2 C, D and E of this memorandum.

That the legality of this involvement is a justiciable issue cannot be doubted. The "Government of the United States has been emphatically termed a government of laws, and not of men". *Marbury* v. *Madison* 1 Cr. 137, (1803).

In the landmark decision of *Ex Parte Milligan*, 4 Wall 2 (1866) the Supreme Court held that governmental acts must comply with the constitution; not only in time of peace, but also during war time:

> "*The Constitution of the United States is a law for rulers and people, equally in war and in peace,* and covers with the shield of its protection all classes of men, at all times, and under all circumstances. *No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.*" 71 U.S. at 120, 121. (Emphasis added).

In particular, the "war power" and considerations of "national defense" are no less subject to constitutional limits than any of the other powers and duties conferred

upon the President. As the Court held in *United States* v. *Robel*, U.S. , , 19 L. ed 2d 508, 514 (1967):

> "*However, the phrase "war power" cannot be invoked as a talismanic incantation to* support any exercise of congressional power which can be brought within its ambit. '[E]ven the war power does not remove constitutional limitations safeguarding essential liberties.' *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U.S. 398, 426 . . . this concept of 'national defense' cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. *Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart.* For almost two centuries, our country has taken singular pride in the democratic ideals enshrined in its Constitution, and the most cherished of those ideals have found expression in the First Amendment. *It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . .*" (Emphasis added).

This principle of the dominance of law over the exercise of power has been articulated on numerous occasions by the Supreme Court, *Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146:

> ". . . the war power of the United States, like its other powers and like the police power of the states, is subject to applicable Constitutional limitations. (Ex parte *Milligan*, 4 Wall 2, 121-127; *Monongahela Nav. Co.* v. *United States*, 148 U.S. 312, 336; *United States* v. *Joint Traffic Assn.*, 171 U.S. 505, 571; *McCray* v. *United States*, 195 U.S. 27, 61; *United States* v. *Cress*, 243 U.S. 316, 326)." 251 U.S. at 156.

One dramatic instance when the executive war power clashed with, and was declared subject to, constitutional limitations occurred in *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1951). With the possibility of a steel strike, President Truman issued an executive

order directing the Secretary of Commerce to take possession of the steel mills because a strike would imperil the national defense when American armed forces were fighting in Korea. The Court held that the seizure order could be sustained neither,

> ". . . as an exercise of the President's military power as Commander in Chief of the Armed Forces [n]or . . . because of the several constitutional provisions that grant executive power to the President". 343 U.S. at 587.

In a concurring opinion, Mr. Justice Jackson elaborated:

> "What the power of command may include, I do not try to envision, but I think *it is not a military prerogative,* without support of law, *to seize persons* or property *because they are important or even essential for the military and naval establishment.*" 343 U.S. at 646.

Also writing a separate concurring opinion, Mr. Justice Frankfurter underlined the importance of judicial intervention:

> "The judiciary may, as this case proves, have to intervene in determining where authority lies as between the democratic forces in our scheme of government." 343 U.S. at 603.

The seizure of defendant, no less than the seizure of the steel plants, is protected by the "due process" clause of the Fifth Amendment.

The refusal of the United States Supreme Court to grant certiorari in *Mitchell* v. *United States,* 386 U.S. 972 (1967), of course does not preclude this Court from judging the legality of the government's involvement in Viet Nam under international and domestic law. As Mr. Justice Douglas said in his dissent in the *Mitchell* case, *supra*:

> "There is a considerable body of opinion that our action in Vietnam constitutes the waging of an aggressive 'war' ".

Mr. Justice Douglas quoted Mr. Justice Jackson, United States Prosecutor at Nuremburg, as saying:

> "If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us." (International Conference on Military Trials, Depart. State Pub. No. 3880, p. 330).

More recently, in *Mora* v. *McNamara*, U.S. , 19 L. ed 2d 287 (1967), Mr. Justice Douglas again dissented, this time joined by Mr. Justice Stewart, from the Court's denial of a petition for writ of certiorari. Mr. Justice Douglas explained the function of the judiciary in cases of this nature in simple, straight-forward language:

> "We do not, of course, sit as a committee of oversight or supervision. What resolutions the President asks and what the Congress provides are not our concern. With respect to the Federal Government, *we sit only to decide* actual cases or controversies within judicial cognizance that arise as a result of *what the Congress* or the President or a judge *does or attempts to do to a person or his property.*" 19 L. ed 2d at 290. (Emphasis added).

It follows that the government cannot deprive defendant of his liberty, consistent with the dictates of due process, unless it submits the legality of its military involvement in Viet Nam to the judgment of this Court.

Nor can the government object that defendant lacks standing to request an adjudication of this issue. As the Supreme Court held in *Flast* v. *Cohen*, U.S. , 20 L ed. 2d 947, (1968):

> "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the contro-

versy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204, 7 L ed. 2d 663, 82 S Ct. 691 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." 20 L ed. 2d at 961.

Clearly, defendant has a personal stake in the outcome of the controversy.

As will be shown in part 2 C, D and E of this memorandum, the government's military involvement in Viet Nam violates both international and domestic law.

2. *Defendant Reasonably Believed That The Government's Military Involvement in Viet Nam is Illegal.*

A. *Defendant believed the government's military involvement in Viet Nam to be illegal.*

Attached hereto as "Exhibit 1" is an affidavit wherein defendant states in part that, at the time he refused to submit to induction, he believed the government's military involvement in Viet Nam to be illegal.

B. *The government recently conceded that a reasonable man could hold the view that the United States involvement in Viet Nam is illegal.*

Attached hereto as "Exhibit 2" is the affidavit of William M. Kunstler, chief defense counsel in the case of *United States* v. *Berrigan*, Cr. No. 28, 111 (D. Md. October, 1968). Attached to said affidavit is a transcript of a colloquy between the Court and counsel for the government which states in pertinent part:

"MR. MURPHY: No. Your Honor. We say that a reasonable man could have his views.

> THE COURT: All right. Then I take it that the Government is not contending that his views that the war is illegal are so unreasonable that a reasonable man would not have them."

The government should not be permitted to adopt inconsistent positions with respect to a question of fact common to actions initiated by the government throughout the United States.*

C. *Twelve experts concur that the government's military involvement in Viet Nam violates international law.*

Submitted as Exhibit 3 to this memorandum is a copy of the book *Viet Nam and International Law,* subtitled

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* The determination in the *Berrigan* case, supra, should bind the government in the instant case. For as the Supreme Court of California, Traynor, J., held in *Bernhardt* v. *Bank of America,* 19 Cal. 2d 807 (1942):

> "Just why a party who was not bound by a previous action should be precluded from asserting it as a res judicata against a party who was bound by it is difficult to comprehend. (See 7 Bentham's Works (Bowring's ed.) 171.) Many courts have abandoned the requirement of mutuality and confined the requirement of privity to the party against whom the plea of res judicata is asserted. Coca Cola Co. v. Pepsi Cola Co., supra Liberty Mutual Ins. Co. v. George Colon & Co., 260 N.Y. 305, 183 N.E. 506; Atkinson v. White, 60 Me. 396; Eagle, etc., Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314, 57 A.L.R. 490; Jenkins v. Atlantic Coast Line R. Co., 89 S.C. 408, 71 S.E. 1010; United States v. Wexler, 8 F. 2d 880. See Good Health Diary Food Products Corp. v. Emery, 275 N.Y. 14, 9 N.E. 2d 758, 112 A.L.R. 401. The commentators are almost unanimously in accord. 35 Yale J.J. 607; 9 Va. L. Reg., N.S., 241; 29 Ill. L. Rev. 93; 18 N.Y.U.L.Q.R. 565, 570; 12 Corn. L.Q. 92."

There can be no question of privity here: the government which is proceeding against defendant here is the same government which prosecuted Berrigan. As the said Exhibit 2 shows, the Court in *Berrigan* advised the government,

> "We will be here and let people read all of these books, if you are going to contest the reasonableness of his views."

The government chose not to expose the jury to the specific book offered by defense counsel (*Viet Nam and International Law*) or to other literature and expert and lay testimony bearing on the legality issue. The government should be bound by that choice.

"The Illegality of United States Military Involvement", (O'Hare Books, 1967). This book was sponsored by the Lawyers Committee on American Policy toward Vietnam, and was written by and in consultation with the following experts on international law:

RICHARD A. FALK Milbank Professor of International Law, Princeton University.

RICHARD J. BARNET Co-Director, Institute for Policy Studies, Washington, D. C.

JOHN H. E. FRIED Professor of Political Science, City University of N. Y. (City College).

JOHN H. HERZ Professor of International Relations, City University of N. Y. (City College).

STANLEY HOFFMAN Professor of Government and International Law, Harvard University.

WALLACE McCLURE Lecturer on International Law, Universities of Virginia, Duke, Dacca, Karachi.

SAUL H. MENDLOVITZ Professor of International Law, Rutgers University School of Law.

RICHARD S. MILLER Professor International Law, Ohio State University College of Law.

HANS J. MORGENTHAU Albert A. Michelson Distinguished Service Professor Political Science and Modern History, University of Chicago.

WILLIAM G. RICE Professor of International Law, University of Wisconsin Law School.

BURNS H. WESTON Professor of International Law, University of Iowa, College of Law.

QUINCY WRIGHT Professor Emeritus of International Law, University of Chicago.

These eminent men of the law draw the following conclusions:

"The policy of the United States in Vietnam has been to use military force in violation of the Geneva Accords of 1954, the United Nations Charter of 1945, the Kellogg-Briand Pact of 1928 and several rules

of general international law. In the pursuit of this policy, the United States has ever more openly claimed for itself and the Saigon regime the right to consider the Geneva Accords of 1954, which regulate the internal and international position of the whole of Vietnam, as non-binding, while at the same time insisting that the other side is bound.

In particular, the following salient points emerge:

1. "The United States claim to be acting in "collective self-defense" on behalf of South Vietnam is contrary to the well-established meaning of the rule laid down in Article 51 of the United Nations Charter to define the situations in which the right of collective self-defense may be lawfully exercised.

2. The United States military intervention in Vietnam therefore also violates the fundamental prohibition of the use of force proclaimed in Article 2(4) of the Charter as a Principle of the United Nations.

3. The United States has refused for more than a decade to abide by the basic Charter obligation contained in Article 33(1) to seek the settlement of international disputes by peaceful means.

4. The United States has refused to make proper use of the elaborate machinery created by the Geneva Accords of 1954 for the purpose of preventing any improper developments in Vietnam. The United States, furthermore, abetted and supported the systematic disregard of these obligations by the Saigon regime.

5. The State Department contends that an armed attack by North Vietnam upon South Vietnam occurred before February 7, 1965, the date on which the United States started overt war actions. This contention itself implies that the use of force by the United States in Vietnam during the four-year period between 1961 and early 1965 was illegal. The State Department agrees with the position of this analysis that armed attack must have taken place to justify the use of force by the United States under the principle of 'collective self-defense.'

6. In February 1965, when the United States started war actions against North Vietnam, the United States formally declared that these war actions constituted reprisals. Under the rules of international law governing the right of reprisal, these war actions must be regarded as illegal reprisals.

7. The United States abetted the breach of the central provision of the Geneva Accords of 1954 by South Vietnam, namely, the obligation to hold nationwide elections under international supervision looking toward the reunification of the Southern and Northern zones of Vietnam under a single government.

8. The United States also contravened other basic provisions of the Geneva Accords of 1954 by fostering a foreign military build-up in Vietnam and by virtually bringing South Vietnam into a military alliance.

9. The presence of large United States military forces in South Vietnam and the introduction of military equipment into South Vietnam has violated those provisions of the Geneva Accords which prohibit any foreign military build-up in South Vietnam. This conclusion has been confirmed by findings of the ICC.

10. The war actions of the United States in South Vietnam are not authorized by the SEATO Treaty but, in fact, appear to be in violation of it.

11. Even if the United States were legally entitled to take war actions in Vietnam, its methods of warfare would still be illegal insofar as they have violated the rules and customs of warfare."

D. *The government's military involvement in Viet Nam has consistently violated the rules of warfare.*

Submitted as Exhibit 4 to this memorandum is a book entitled *In The Name of America*, (E. P. Dutton & Co., Inc., 1968). This book was sponsored by the Clergy and Laymen Concerned About Vietnam.

The introductory paragraph to this book sets forth a devastating indictment of the government's military involvement in Viet Nam:

> "The news dispatches that follow do not make pleasant reading. Their cumulative effect is overpowering, for they do not merely confirm what we all know, that the war in Vietnam is dirty and inhumane, but they also establish something few of us have known, that American conduct in Vietnam has been characterized by consistent violation of almost every international agreement relating to the rules of warfare. All war is hell: this has been used as an argument to justify any means to achieve victory as well as an argument for the condemnation of all war; but so long as men have fought they have sought to establish rules and to set limits beyond which, by common consent, decent men will not go. If there are such offenses as 'crimes against humanity,' as the United States tried to domonstrate after World War II, then American conduct in Vietnam is condemned by those standards of conduct which we imposed on a defeated enemy in the Nuremburg Trials. When we measure American actions in Vietnam against the minimal standards of constraint established by the Hague Convention of 1907 and the Geneva Conventions of 1929 and 1949, our nation must be judged guilty of having broken almost every established agreement for standards of human decency in time of war.:

Twenty-nine eminent spiritual leaders from across the land signed the above commentary:

Bishop Ralph T. Alton
Madison, Wisconsin

Bishop William Crittenden
Diocese of Erie, Pennsylvania

Dr. John C. Bennett,
President,
Union Theological Seminary

Dr. Harvey G. Cox,
Professor,
Divinity School
Harvard University

Dr. Robert McAfee Brown,
Professor,
Stanford University

Dr. Edwin T. Dahlberg,
Former President,
National Council of Churches

Dr. Truman Douglass,
Executive Vice President,
Board of Homeland Ministries
of The United Church of Christ

Father Robert Drinan,
Dean,
Boston College Law School

Dr. Joseph Fletcher,
Professor,
Eposcopal Theological Seminary

Rabbi Roland Gittelsohn
Temple Israel
Boston, Massachusetts

Bishop Charles F. Golden
Nashville, Tennessee

Rev. Dana McLean Greeley,
President, Unitarian
Universalist Association

Rabbi Abraham Heschel,
Professor,
Jewish Theological Seminary

Bishop Fred Holloway
Charleston, West Virginia

Rabbi Wolfe Kelman,
Professor,
Jewish Theological Seminary

Dr. Martin Luther King, Jr.
President, Southern Christian
Leadership Conference

Rabbi Arthur Lelyveld,
President,
American Jewish Congress

Rabbi Albert Lewis
Temple Isaiah
Los Angeles, California

Bishop John Wesley Lord
Washington, D. C.

Dr. Martin Marty,
Professor, Divinity School,
University of Chicago

Bishop Paul Moore, Jr.
Suffragan Bishop of the
Diocese, Washington, D. C.

Bishop J. Brooke Mosley, DD.
Diocese of Delaware
Wilmington, Delaware

Dr. Robert V. Moss, Jr.
President,
Lancaster Theological Seminary

Bishop C. Kilmer Myers
Diocese of California
San Francisco, California

Father John Sheerin,
Editor,
Catholic World

Dr. Eugene Smathers,
Moderator,
Presbyterian Church USA

Dr. Douglas V. Steere, Chairman
Friends World Committee for
Consultation, Haverford,
Pennsylvania

Bishop R. Marvin Stuart,
Denver, Colorado

Bishop Ralph Ward, Jr.,
Syracuse, New York

E. *The government's military involvement in Viet Nam violates domestic law.*

In a recent analysis of the legality of the government's military involvement in Viet Nam, the conservative Harvard Law Review concluded as follows:

"Under the analysis in this note *the validity of the President's actions in Vietnam depends on whether or not specific congerssional approval has been secured* for the war which has developed. The action is not a response to an attack on or a declaration of war against the United States. In terms of troop commitment and casualties—which now exceed those of the Korean War—the conflict, excluding the Civil War, has become the third largest in American history: it is 'war' within the meaning of article I, section 8. Current treaty agreements, in particular the SEATO Treaty, do not purport to serve as authorization for such a war. *Such authorization, if it has been secured, must be found in the Gulf of Tonkin Resolution* . . . At best, the Gulf of Tonkin Resolution, even coupled with subsequent appropriations, leaves unclear the extent to which congressional authorization of the war has been expressed." (Emphasis added).

Note, *Congress, The President, and the Power to Commit Forces to Combat*, 81 Harv. L. Rev. 1771, 1805 (1968).

Thus, the so-called "Gulf of Tonkin Resolution" appears to be the only basis for the legitimacy of the government's military involvement in Viet Nam under the Constitution of the United States. The unreliability of the Gulf of Tonkin Resolution, and the consequent illegitimacy of the government's use of power in Viet Nam, is exposed in an article by I. F. Stone, "McNamara and Tonkin Bay: The Unanswered Questions", *New York Review of Books*, March 28, 1968, p. 5 et seq., where he analyzes the Hearing Before the Committee on Foreign Relations, United States Senate, Ninetieth Congress, Second Session, with the Honorable Robert S. McNamara, Secretary of Defense, on February 20, 1968.

In any event, the statement by the Honorable Paul G. Findley, Member of Congress, presented to the Committee on Foreign Relations of the United States Senate on August 23, 1967, shows that the Gulf of Tonkin Resolution related only to an armed attack on United States ships. It does not relate to any armed attack upon South Viet Nam, which is the principal basis for the govern-

ment's military involvement in Viet Nam. As Representative Findley concludes, the government's involvement violates the SEATO Treaty. (A part of the statement by Representative Findley is reproduced in Appendix VII to the said Exhibit 3, pages 155, 156.)

Manifestly, it can not be supposed that Congress authorized the violation of the SEATO Treaty or of any other applicable provision of international law.

F. *The conclusion that the government's military involvement in Viet Nam is illegal has been widely, and vocally, accepted by leaders in all sectors of the nation.*

(1) Martin Luther King, winner of the Nobel Prize for Peace, in *Speeches by the Rev. Dr. M. L. King About the War in Vietnam* (N.Y., 1968), said in his speech "Vietnam is Upon Us", given on February 6, 1968 in Washington, D. C.:

> "Nothing convinces me more that we suffer this moral and spiritual lag than our participation as a nation in the war in Vietnam. Our involvement in this cruel, senseless, unjust war is a tragic expression of the spiritual lag of Americans."

(2) Representative Stephen Young (D. Ohio), accuses the United States of violating the Geneva Convention with respect to the treatment of prisoners of war. Congressional Record-Senate July 20, 1966, 15638.

(3) Senator George McGovern (D.-S. Dakota), accuses the United States of "devastating" Vietnam and "ravishing the people whose freedom we would protect". N. Y. Times, April 26, 1967, p. 9.

(4) Senator Wayne Morse (D. Oregon), former dean of University of Oregon Law School, states that the United Nation Charter and the Geneva Agreement of 1954 "make the Vietnam war illegal". Philadelphia Inquirer, April 27, 1964.

(5) Mr. Donald Luce, Director of International Voluntary Services, a voluntary aid agency in Viet Nam supported partly by government funds, resigned in protest to the war. As reasons for his resignation, he cites the destruction of family life, the large numbers of civilian casualties caused by bombing, and the "destruction" of the Vietnamese people. New York Times, September 20, 1967.

(6) D. F. Fleming, Emeritus Professor of International Relations, Vanderbilt U., speaks of the Vietnam war as "a tragic moral failure in our national experience", in which the United States is "surpassing the worst days of European colonialism". D. F. Fleming, "Vietnam and After", The Western Political Quarterly, Vol. XXI, No. 1, March, 1968, pp. 141 ff.

(7) In "Just a Drop Can Kill", Secret work on Gas and Germ Warfare", *The New Republic*, May 6, 1967, p. 11-15, Seymour Hersh describes research on chemical and gas warfare, and some of the uses being made of chemicals and gas by the government in Vietnam.

(8) James A. Joyce accuses the United States of deliberate bombing of civilians in North Vietnam, "Bombing of Civilians: The Red Cross Stand", *Christian Century*, April 12, 1967.

(9) The Nation, May 15, 1967 comments editorially that the accusation that Americans are "the Nazis of today" contains a "shocking component of truth". The editorial says, "Called on to support an universal war, many Americans refuse to respond with the traditional patriotic tropisms. May their numbers increase!".

(10) Dr. Robert Novak, professor of religion, Stanford University, argues that in light of the destruction of Vietnam, there can be no justification of the war. *Vietnam, Crisis of Conscience*, Novak, Heschel, Brown (New York, 1967) p. 47. In the same book, Rabbi Abraham Hirchel, professor of Ethics and

Mysticism, Jewish Theological Seminary, contends that the conscience of the United States has become "a fossil", and says that he is "horrified by the atrocities of this war", pp. 56-59; and Robert McAfee Brown, Professor of Religion at Stanford, says that the Vietnamese War contradicts the fundamental propositions that God is the Father of all men and that God has implanted His image in all men, p. 87.

(11) John K. Galbraith, former United States Ambassador to India, professor of Economics at Harvard: "But I would judge . . . that the chance to persuade the people on the merits of the Vietnam war is now irrevocably lost. If so, it is now a war that we cannot win, *should* not wish to win, are not winning, and which our people do not support". J. K. Galbraith, *How To Get Out of Vietnam* (New York, 1967) p. 31 f.

The following books lend further support to the indictment of the Viet Nam war:

(12) Howard Zinn, *Vietnam: The Logic of Withdrawal*, (Boston, 1967), particularly pp. 56-82.

(13) Theodore Draper, *The Abuse of Power*, New York: Viking, 1967.

(14) Richard A. Falk (ed.), *The Vietnam War and International Law*, Princeton University Press, 1968.

(15) Felix Greene, *Vietnam! Vietnam! Photographs and Text*, Palo Alto, Calif. Fulton, 1966.

(16) David Halberstam, *The Making of A Quagmire*, Random House, 1965.

(17) Edward S. Herman and Richard B. DuBoff, *America's Vietnam Policy: The Strategy of Deception*, Washington, D.C., Public Affairs Press, 1966.

(18) Staughton Lynd, *The Other Side*, New American Library, 1967.

(19) Mary McCarthy: *Vietnam*, Harcourt, Brace & World, 1967.

(20) Hans Morgenthau, *Vietnam and the United States*, Public Affairs Press, 1965.

(21) Marcus G. Raskin and Bernard B. Fall (ed.), *The Vietnam Reader*, New York: Random House, 1965.

(22) Harrison Salisbury, *Behind The Lines-Hanoi: December 23, 1966-January 7, 1967*, New York: Harper & Row, 1967.

(23) Franz Schurman, et al., *The Politics of Escalation in Vietnam*, Beacon Press, 1966.

(24) In the book *Authors Take Sides on Vietnam*, Bagguley, eds., 1967, the following authors, among many others, condemn the illegality of American involvement in Vietnam:

A. S. Ayer, Philosopher, p. 18;
Robert Bolt, Playwright, p. 22;
Graham Greene, Novelist, p. 37;
Walter Kaufman, Philosopher, p. 44;
Denise Levertov, Poetess, p. 46;
Herbert Marcuse, Philosopher, p. 50;
Lewis Mumford, Sociologist, p. 55;
C. P. Snow, Novelist, p. 69;
Stephen Spender, Poet and Journalist, p. 70;
George Steiner, Critic, p. 71; and
Barbara Tuchman, Historian, p. 72.

In particular, Bertrand Russell, states

"Atrocity has characterized the conduct of the war throughout its history . . . I regard the policy-makers in Washington who preside over both the aggression and the atrocity to be war criminals in the precise sense laid down by the Nuremberg Trials."

(25) Jean-Paul Sartre, *New York Times*, May 3, 1967 stated that, in the judgment of the War Crimes Tribunal, of which he was the executive president, the United States government was guilty of aggression and "'widespread, systematic and deliberate" bombardment of civilian targets in Vietnam.

3. *The Defendant's Reasonable Belief that the Government's Military Involvement in Viet Nam is Illegal Justifies His Refusal to Submit to Induction Into the Armed Forces.*

A. *Under traditional criminal law concepts of justification, the defendant's reasonable belief that the Viet Nam war is illegal entitles him to have the indictment dismissed.*

It requires no argument that if the government's military involvement in Viet Nam is indeed illegal, the attempt to conscript defendant into the armed forces, against his will, is also illegal.* As clearly appears from the Marshall *Report of the National Advisory Commission on Selective Service*, U. S. Govt. Print Off. 1967, were it not for the military involvement in Viet Nam, defendant would not be faced with conscription into the armed forces:

> "Volunteers have contributed two-thirds of the military force since 1950. With limited exceptions, the Navy, Marines and Air Force have used volunteers almost entirely. And in periods of relative quiet, when draft calls have been low, most of the entrants into the Army itself have been volunteers".

In short, virtually all draftees are inducted into the Army, but in time of peace, the Army is able to recruit a sufficient number of enlisted personnel.

However, defendant's reasonable belief that the war is illegal, in and of itself, absolves him of criminal responsibility under traditional concepts of justification of acts otherwise criminal.

In the first instance, defendant's reasonable belief negates the requisite criminal intent. Stated differently,

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* Beyond this basic point, if the judiciary declines—for whatever good and sufficient reasons—to adjudicate the legality of United States participation in the Viet Nam conflict, then again defendant should be absolved of criminal liability for refusing to permit a taking of his liberty which, by assumption, lacks the constitutional safeguard of due process, if he hold the belief that the war (and therefore the taking) is illegal.

there is no duty to obey an illegal command, nor one reasonably believed to be illegal. The principle is usually applied with respect to justification of affirmative acts, rather than, as here, justification of refusal to act. E.g. *U.S.* v. *Ashton*, 2 Sumn. 13, F. Cas. No. 14,470 (C.C. Mass.). *State* v. *Jackson*, 71 N.H., 552. And such justification is customarily based, not on actuality of imminent danger, but on the reasonable apprehension thereof. *Harris* v. *State*, 96 Ala. 24 (1891): *Haines* v. *State*, 275 P. 2d 347 (Okl. Cr. 1954). Perkins, *Criminal Law* (1957), pp. 883-899. In short, necessity, of which one form is self-defense, (e.g. *People* v. *Maine*, 166 N.Y. 50 (1901); *State* v. *Abbott*, 36 N.J. 63 (1961)), constitutes justification:

> "*If* the *necessity* which leaves no alternative but the violation of the law to preserve life, *be allowed as an excuse for committing what would otherwise be high treason, parricide, murder*, or any other of the higher crimes, *why should it not render venal an offense which is only malum prohibitum*, and the commission of which is attended with no personal injury to another." *The William Gray*, 29 Fed. Cas. 1300, No. 17, 694 (C.C.N.Y. 1810). (Emphasis added).

The reasoning of the Court in the above quotation from *The William Gray* decision illustrates that the notions of "criminal intent", "necessity", "self-defense" and so on, are merely different facets of the same principle. See e.g., Model Penal Code Tentative Draft No. 8 (1958), § 3.02.

In the present case, as Exhibit 1 to this memorandum shows, defendant believed (reasonably) the government's military involvement to be illegal, one aspect of such illegality being the violation of the Charter of the International Military Tribunal of Nuremberg, which is an integral part of the Treaty of London, August 8, 1945, 59 Stat. 1544, to which the United States is a signatory. The Charter of the Nuremberg Tribunal was unanimously affirmed by the General Assembly of the United Na-

tions on December 11, 1946. The United States took a leading role (together with France, Britain and the Soviet Union) in drafting the Nuremberg Charter. The pertinent provisions are as follows:

Principle I

"Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment".

Principle IV

"The fact that a person acted pursuant to order of a superior does not relieve him from responsibility provided a moral choice was in fact possible to him".

Principle VI

"The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

c. Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime."

Thus, participation (Principle VI a. (ii)) by defendant in a war which he believes to violate Principle VI a. (i) renders him liable to prosecution under Principles I and IV since a moral choice was open to him. Defendant made that moral decision.

The Nuremberg Charter is not simply part of the law of the United States by reason of its treaty status. It is declaratory of an international law which is independent of the Constitution. Thus, in refusing to participate in an illegal war, defendant was obeying the higher commands of the Constitution of the United States as well as those of an international law which governs the people of all the nations on earth.

As Mr. Justice Jackson, then United States prosecutor at Nuremberg, stated: "If certain acts . . . are crimes, they are crimes whether the United States does them or whether Germany does them."

B. *Defendant's inability to permit himself to be inducted, consistent with the dictates of his conscience and in light of his reasonable belief that the government's military participation in Viet Nam is illegal, entitles him to have the indictment dismissed.*

A citizen's right of conscience is protected by the Constitution of the United States. The right has been recognized as imbedded in the First Amendment, protection of free exercise of religion, ". . . according to the dictates of conscience . . .", *McGowan* v. *Maryland*, 366 U.S. 420 (1961). The right was also characterized in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943) as,

". . . the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

Particularly apt is the following declaration from the *Barnette* decision; *supra*:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." See also *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

However, the right of conscience can as easily, and perhaps more appropriately, be founded on the Ninth Amendment. The history of that Amendment is briefly described in *Griswold* v. *Connecticut*, 381 U.S. 479 (1964) where the Court recognizes Madison as the chief author of the clause. Madison had, as one of his chief concerns, the protection of the right of conscience. See Brant, *Madison: On the Separation of Church and State*, William & Mary Quarterly, Series III, vol. 8, 1951.

The *Griswold* decision defines the scope of the Ninth Amendment as follows:

"In determining which rights are fundamental, *judges* are not left at large to decide cases in light of their personal and private notions. Rather, they *must look to the, traditions and* [*collective*] *conscience of our people*" to determine whether a principle is "so rooted [there] . . . as to be ranked as fundamental. Snyder v. Massachusetts, 291 U.S. 97, 105. The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' . . ." Powell v. Alabama, 287 U.S. 45." (Emphasis added).

Thus, the Court explicitly recognizes what Madison sought to achieve, namely that the "conscience of our people" is protected by the Ninth Amendment.

The right of conscience, in the context of objection to war, was articulated by later chief Justice Stone in *The Conscientious Objector*, 21 Col. U. Q., pp. 268, 269, Number 4, October 1919, as follows:

> "Viewed in its practical aspects, however, *there* may be and probably *is a very radical distinction between compelling a citizen to refrain from acts* which he regards as moral but which the majority of his fellow citizens and the law regard as immoral or unwholesome to the life of the state on the one hand, *and compelling him* on the other *to do affirmative acts which he regards as unconscientious and immoral.* The action of the state in compelling the citizen to refrain from doing an act which he regards as moral and conscientious does not in most instances which are likely to occur do violence to his conscience; but conscience is violated if he is coerced into doing an act which is opposed to his deepest convictions of right and wrong . . . The ultimate test of the course of action which the state should adopt will of course be the test of its own self-preservation; but with this limitation, at least in those countries where the political theory obtains that the ultimate end of the state is the highest good of its citizens, *both morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state.* So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of the self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process. *Every ethical and practical consideration which should lead the state to endeavor to avoid the violation of the conscience of its citizens* should therefore lead a wise and humane government to

seek some practical solution of this difficult problem." (Emphasis added).

It is no exaggeration, therefore, to consider as fundamental, and necessarily protected by the Ninth Amendment, the right of conscience to refuse to participate in a war reasonably believed to be illegal. Defendant's exercise of that right (see Exhibit 1, to this memorandum) is so protected.

4. *The Military Selective Service Act of 1967 is Unconstitutional and, Therefore, the Indictment Returned Against Defendant Should Be Dismissed.*

A. *The regulations adopted pursuant to the Military Selective Service Act do not afford defendant the protections required by due process.*

Prior to 1967, the regulations provided that a registrant whose request for classification as a conscientious objector was denied by his Local Board could obtain a hearing before a Justice Department officer. This Justice Department hearing was accompanied by an FBI investigation bearing on the registrant's sincerity. Denial of such a hearing voided a classification. *Sterrett* v. *United States*, 216 F. 2d 659. (9th Cir. 1954).

However, in 1967 the Act was amended to eliminate the provision for a Justice Department hearing, with the consequence that a registrant is presently afforded only one "appearance" before his local board where he lacks rights to counsel, to a transcript, or to present evidence. 32 C.F.R. §§ 1624.1-3 (1967). Coupled with the finality of the local board's determination, which is subject to judicial review only to ascertain whether the determination has a "basis in fact", *Estep* v. *United States*, 327 U.S. 114 (1946), the conclusion is inescapable that a registrant is denied due process.

Judge Ritter so held in *United States* v. *Capson*, Cr. No. 8059, (D. Utah 1965), as the following colloquy from the transcript of the trial indicates:

"THE COURT: . . . The only place he has a trial on this issue in any real sense is before that

draft board, and maybe he is entitled to an attorney there . . .

MR. WINDER: That says in a non-judicial proceeding like this, where . . .

THE COURT: Well, it is judicial.

MR. WINDER: No, Your Honor.

THE COURT: You can't say that is non-judicial when the record is not reviewable here . . ."

Judge Ritter held that the defendant was entitled to counsel. His decision was reversed on appeal, *United States* v. *Capson*, 347 F. 2d 959 (10th Cir. 1965), on the ground that the local board proceeding was not a judicial one. Whatever the merits of that decision may have been prior to the amendment of 1967, which eliminated the opportunity to make a record before the Justice Department examiner, it ought not to be followed today, particularly in light of recent decisions emphasizing the importance of the right to counsel, among other rights, as fundamental to due process. *In re Gault*, 387 U.S. 1 (1967)—right to counsel in "non-criminal" juvenile proceedings; *Mempa* v. *Rhay*, 19 L. ed 2d 336 (1967)—right to counsel at hearing on revocation of probation; *Mathis* v. *United States*, 20 L. ed 2d 381 (1968)—right to counsel before commencement of criminal investigation by Internal Revenue Service.

Judged by these decisions, the provision of 32 C.F.R. § 1624.1 (b) "That no registrant may be represented before the local board by anyone acting as attorney or legal counsel", is patently unconstitutional. It not only does not provide for advising registrants of their right to counsel, but it rejects beforehand any request to be so represented.

B. *The Military Selective Service Act of 1967 is unconstitutional because it purports to authorize compulsory conscription during peace time.*

In *Holmes* v. *United States*, 20 L ed. 2d 856 (1968), the Court refused to grant a petition for writ of certiorari on the question of compulsory conscription in time

of peace. Mr. Justice Douglas dissented pointing out that in *Hamilton* v. *Regents of University of California*, 293 U.S. 245, 265 (1934), Mr. Justice Cardozo wrote a concurring opinion (joined by Justices Brandeis and Stone) in which he indicated that the question was an open one. Mr. Justice Douglas shows that the Act of 1917 was the first law in our nation's history requiring military service, and that with the exception of occasional dicta, the Supreme Court has never considered the power to conscript in time of peace. 20 L ed. 2d at 857-864. The question likewise has not been determined either in this Court or in the Court of Appeals.

The historical record provides ample support for the conclusion that the framers of the Constitution denounced the principle of compulsory military service in peacetime. The following is an excerpt from a brief submitted by the Honorable Burton K. Wheeler of Montana, member of the Senate of the United States, on behalf of the Lawyers' Committee to Keep the United States Out of War which, by unanimous consent, is printed in the Appendix to the Congressional Record for August 23, 1940:

> "Our own Declaration of Independence categorically declared the causes which impelled the Colonies to separate from England. The signers of that memorable document were addressing themselves to all mankind. They were not dwelling upon trivialities when, in submitting their grievances 'to a candid world,' they said of their royal oppressor: .
>
> 'He has kept among us, in times of peace, standing armies without the consent of our legislature.
>
> 'He has affected' to render the military independent of and superior to the civil power.'
>
> And in the turbulent period of the Revolutionary War itself, with the life of the new country at stake, Thomas Jefferson, himself a signer of the Declaration wrote John Adams on May 16, 1777:
>
> '. . . Our battalions for the continental service were sometime ago so far filled as rendered the recom-

mendation of a draft from the militia requisite, and the more so as in this country it ever was the most unpopular and impracticable thing that could be attempted. Our people, even under the monarchial government, had learnt to consider it as the last of all oppressions.' . . . Adams, C.F., The Life and Works of John Adams (Boston, 1854), volume IX, page 465.

Jefferson's opposition was typical of the prevalent sentiment among the young Nation's leadership. They recognized, though not without misgiving, the conceivable necessity of a standing army even in peacetime, but the record shows that in the spirit of the Declaration they were adamant in their opposition to raising it by conscription.

Thus in 1775 the Continental Congress had resolved 'to raise several companies of riflemen by enlistment for 1 year, to serve in the American Continental Army' (Elliot's Debates (Ed. 2, 1854), vol. 1, p. 47); and the commission to George Washington, as Commander in Chief of the American Army subscribed by the President of the Congress on the 19th day of June 1775, declared:

'We, reposing especial trust and confidence in your patriotism, conduct, and fidelity, do by these presents, constitute and appoint you to be General and Commander in Chief of the Army of the United Colonies, and of all the forces raised or to be raised by them, and of all others *who shall voluntarily offer their service*, and join the said Army for the defense of the American liberty, and for repelling every hostile invasion thereof . . .' (Elliot, supra, p. 47).

Throughout the conflict which followed the practice of using only enlisted men in the Army never varied. The States, too, in filling their quotas fixed by the Congress, resorted to the method of volunteer service only. True, it was assumed that all able-bodied men were available for war service, but this was deemed

a privilege of Americans, not a duty exacted by law (Brandeis, J., in *Gilbert* v. *Minnesota*, 254 U.S. 325, 339 (1920)).

And Mr. Nason:

'Suffer me, sir, to say a few words on the fatal effects of standing armies, that bane of republican governments. . . . Britain attempted to enforce her arbitrary measures by a standing army. But, sir, we had patriots then who alarmed us of our dangers; who showed us the serpent and bade us beware of it. Shall I name them? . . . We had a Hancock, an Adams, and a Warren. Our sister States, too, produced a Randolph, a Washington, a Greene, and a Montgomery who led us in our way . . .' (Elliot, ibid., vol. 2 p. 136.)

In Virginia, Patrick Henry thundered:

'A standing army we shall have, also, to execute the execrable commands of tyranny' (Elliot, ibid., vol. 3, p. 51).

And James Madison replied significantly:

'Let us observe, also, that the powers in the general government are those which will be exercised mostly in time of war . . . (Elliot, ibid., vol. 3, p. 259).

And from George Mason came the prophetic words:

'But when once a standing army is estabilshed in any country the people lose their liberty' (Elliot, ibid. vol. 3, p. 380).

And Madison again replied:

'I most cordially agree with the honorable member last up, that a standing army is one of the greatest mischiefs that can possibly happen' (Elliot, ibid., vol. 3, p. 381).

Edmund Randolph, Governor of Virginia, then and there agreed:

'With respect to a standing army, I believe there was not a member in the Federal Convention who

did not feel indignation at such an institution' (Elliot, ibid., vol. 3, p. 401).

And Mr. Dawson concluded:

'Governments ought not to depend on an army for their support, but ought to be so formed as to have the confidence, honor, and affection of the citizens' (Elliot, ibid., vol. 3, p. 611).

The Constitution

After victory and achievement of independence, the unabated aversion to any Federal peacetime army, disclosed in every recorded reference to the subject, implies a clear intent against peacetime conscription.

On August 6, 1787, a committee of five delivered the draft of a constitution to the Constitutional Convention, whose proceedings had been referred to them for that purpose. Article VII, section 1, provided that the Legislature of the United States be enpowered 'to raise armies' (Elliot, ibid., vol. 1, p. 226); it was later moved and seconded to insert 'and support' between 'raise' and 'armies' (Elliot, ibid., p. 248); but, a further amendment adopted by the Convention added the words 'but no appropriation for money for that use shall be for a longer term than 2 years' (Elliot, ibid., p. 285). Such was the final version which was plainly quite different from the one originally submitted.

Yet, even this final version was under constant attack throughout the proceedings of the Convention and every possible effort was made to limit its effect. Farrand, Records of the Federal Convention of 1787 ((1911), vol. 2, pp. 505, 509). Indeed, even as the Convention moved toward final adoption, voices were still heard in protest, and in protest—be it noted—against the maintenance of any standing army at all in peacetime. And, as a study of its proceedings will show, no delegate at that Convention, engaging in the acrimonious debate on this question of any stand-

ing army in peacetime, ever conceived, much less asserted, that along with this limited power the far more drastic power of peacetime conscription was to be conferred on the Congress.

But the Constitution had not yet been adopted. The States had still to ratify it. There, too, the popular aversion to standing armies manifested itself. In Massachusetts General Thompson, at the State Ratifying Convention, declared:

'We are now fixing a national consolidation. This section, I look upon it, is big with mischiefs. Congress will have power to keep standing armies. The great Mr. Pitt says standing armies are dangerous—keep your militia in order—we don't want standing armies.' (Elliot, ibid., vol. 2, p. 80.)

From such a widespread sentiment came the reservations, provisos, and exceptions that attached to the ratifications of practically all the 13 States filed with the Constitutional Convention. We shall give merely the major ones here. From New Hampshire: 'that no standing army shall be kept up in time of peace, unless with the consent of three-fourths of the Members of each branch of Congress; nor shall soldiers in time of peace be quartered upon private houses without the consent of the owners' (Elliot, ibid., vol. 1, p. 326); from New York, the admonition: 'that standing armies in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity; and that at all times the military should be under strict subordination to the civil power' (Elliot, ibid., vol. 1, p. 328); from North Carolina: 'that no standing army or regular troops shall be raised or kept up, in time of peace, without the consent of two-thirds of the Senators and Representatives present in each House' (Elliot, ibid., vol. 1, p. 330); and Rhode Island counseled: 'that standing armies, in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity' (Elliot, ibid., vol. 1, p. 335). This brief historical survey establishes the temper

> of the people and their representatives on this basic issue when the Constitution itself was being debated. Clearly, a deep-seated fear and aversion to compulsory service in peacetime were the dominant sentiments at the time. They are expressed in the restrictions and qualifications attached to the power in course of debate, in the pronouncements of important leaders of the day, and in the reservations of the ratifying States.
>
> It is manifest from the foregoing that the framers of the Constitution, the States which ratified it, and the people who ordained and estabilshed it never intended to empower the Federal Government to compel military service in peacetime." (Emphasis added)

See also "The Constitutionality of Peacetime Conscription," 31 Va. L.R. 40-82.

In the face of the historical record, the argument is customarily advanced that Congress has the inherent power to do whatever is "necessary", and the Courts of Appeal which have upheld the constitutionality of compulsory military service reject out of hand any suggestion that the question of "necessity" is justiciable. For instance, the Court of Appeals for the Sixth Circuit quoted with approval the following language:

> "Nor may the Court inquire into the wisdom of the legislation. *Nor may it pass upon the necessity for the exercise of power possessed,* since the possible abuse of power is not an argument against its existence." *United States* v. *Butler*, 389 F. 2d 172, 177 (1968).

But the justiciability of the existence of a constitutional or legislative fact is hardly a new concept in the law.

In *Block* v. *Hirsh*, 256 U.S. 235 (1921) and *Chastleton Corporation* v. *Sinclair*, 264 U.S. 543, 547-549 (1924), concerning the constitutionality of rent control legislation, Mr. Justice Holmes expressly recognized that a legislative declaration of fact "may not be held conclusive by the courts."

In *Weaver* v. *Palmer Bros.*, 270 U.S. 402, 410 (1926), involving a statute forbidding the use of shoddy in bedding and upholstery, Mr. Justice Butler stated that "it is always open to interested parties to show that the legislature has transgressed the limits of its power."

In City of *Hammond* v. *Schappi Bus Line*, 275 U.S. 164 (1927) dealing with an ordinance limiting the right to operate buses, the Supreme Court again upheld the justiciability of facts necessary to a constitutional decision. In a concurring opinion in *Whitney* v. *California*, 274 U.S. 357 (1927), Mr. Justice Brandeis observed that the existence of a clear and present danger sufficient to justify California's criminal syndicalism act was justiciable.

Likewise in *Borden's Farm Products Company, Inc.* v. *Baldwin*, 293 U.S. 194, 209, 210 (1934), involving the New York Milk Control Law, the court rejected "the presumtion which attaches to the legislative action. *But that is a presumption of fact, of the existence of factual conditions supporting the legislation. As such it is a rebuttable presumtion. . . .*"

In *U. S.* v. *Carolene Products Co.*, 304 U.S. 144, 152-154 (1938), the Court upheld a statute barring filled milk products from interstate commerce, because the requisite supporting facts had been adjudicated. The decision in *Smith* v. *California*, 361 U.S. 147, 165, 172 (1959) struck down an ordinance prohibiting possession of obscene literature. In their separate concurring opinions, Justices Frankfurter and Harlan emphasized the central importance of adjucating the factual underpinnings of a statute. See also *Kress, Dunlap & Lane, Inc.* v. *Downing*, 286 F. 2d 212 (3rd Cir. 1960); Alfange, "The Relevance of Legislative Facts in Constitutional Law," 114 Pa. L.R. 637, 648 (1966).

The principal source of evidence that the draft is unnecessary, as well as wasteful, comes from members of the Congress. Senator Nelson's Plan to End the Draft in 1967, June 29, 1964, 110 C.R. 15365-70; Senator Nelson, February 9, 1965, 111 C.R. 2327-30 and 2333-36; Senator McGovern, June 29, 1964, 110 C.R. 15371; Senator Keating, June 29, 1964, 110 C.R. 15371; Representative Ellsworth, June 28, 1966, Review of the Adminis-

tration and operation of the Selective Service System, Hearings before the Committee on Armed Services, House of Representatives, 89th Congress, Second Session, (hereinafter "Hearings") 9756-9761; Representative Curtis, March 4, 1963, 109 C.R. 3413-7; Representative Lindsay, April 21, 1964, 110 C.R. 8575-6; Representative Taft, April 21, 1964, 110 C.R. 8578-80; Representative Clawson, April 21, 1964, 110 C.R. 8586-7; Representative Kastenmeier, June 29, 1966, Hearings 9872-7; Representative Tunney, June 29, 1966, Hearings 9877-80.

It would serve no purpose to detail the evidence which establishes very serious doubt, at the least, if not conclusive proof, that the draft is unnecessary. It suffices to note that Thomas D. Morris, Assistant Secretary of Defense (Manpower), testifies on June 30, 1966, that the additional cost of an all-volunteer army would probably be in the range of $5 to $9 billion, with a ceiling of $17 billion. This estimate is, of course, challenged by the congressional opponents of the draft. But the significant fact is that even the defenders of the draft are able to place a dollar amount on the savings allegedly effected by the draft.

Consequently, the draft is not "necessary". It does not meet the "clear and present danger" test of legislation which, as does the draft, "broadly stifle[s] fundamental personal liberties," *Shelton* v. *Tucker*, 364 U.S. 479, and deeply "invade[s] the area of protected freedoms," *NAACP* v. *Alabama*, 377 U.S. 288, 307, and *Aptheker*, v. *Secretary of State*, 378 U.S. 500, 508.

While the draft might be sustained if the "rational basis" test applied to commercial regulation were applied, the appropriate standard in this area of personal liberty is the existence of a "clear and present danger". *Thomas* v. *Collins*, 323 U.S. 516, 527-530.

CONCLUSION

For the reasons herein stated, the indictment returned against the defendant should be dismissed.

JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

AFFIDAVIT OF JOHN HEFFRON SISSON IN SUPPORT OF HIS MOTION TO DISMISS THE INDICTMENT RETURNED AGAINST HIM

John Heffron Sisson, defendant in the above-entitled cause, first being duly sworn, deposes and says as follows:

At the time I refused to submit to induction into the armed forces I believed, as I believe today, that the United States military involvement in Vietnam is illegal under international law as well as under the Constitution and treaties of the United States. I believed then, and still believe, that my participation in that war would violate the spirit and the letter of the Nuremberg Charter. on the basis of my knowledge of that war, I could not participate in it without doing violence to the dictates of my conscience.

/s/ John H. Sisson Jr.
JOHN HEFFRON SISSON

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. October 21, 1968

Then personally appeared the above-named John Heffron Sisson who, being duly sworn, on oath deposed and said that the foregoing statements are true, before me.

/s/ [Illegible]
Notary Public
My Commission expires: Oct. 25, 1974

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Cr. 68-237-W

UNITED STATES OF AMERICA

—against—

JOHN SISSON, DEFENDANT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WILLIAM M. KUNSTLER, being duly sworn, deposes and says:

I was chief counsel in *United States of America* v. *Philip Berrigan, et al.*, Cr. # 28,111, in the United States District Court for the District of Maryland. On Wednesday, October 9, 1968, after defendants had offered into evidence *Viet Nam and International Law*, a book whose purpose it is to prove the illegality of the American military involvement in Viet Nam, the government conceded that the defendants' view that said military involvement was illegal, was reasonable. After said concession, I asked the court reporter to transcribe the colloquy relating thereto, and I am attaching it herewith as Exhibit A to this affidavit.

After said concession, defendants made no further efforts to produce any expert testimony or documentary evidence relating to the illegality of American military involvement in Viet Nam.

I am submitting this affidavit at the request of John Flynn, Esq., the attorney for the defendant in the within prosecution.

/s/ William M. Kunstler
WILLIAM M. KUNSTLER

Sworn to before me this 17th day of October, 1968.

/s/ Paul L. Klein
PAUL L. KLEIN

Notary Public, State of New York
No. 31-7266180
Qualified in New York County
Commission Expires March 30, 1970

[fol. 1] (Extract from proceedings before His Honor Roszel C. Thomsen, Chief Judge, in the matter of United States of America v. Philip Berrigan, et al., Criminal No. 28111, on Wednesday, October 9, 1968.)

THE COURT: The Government has conceded that his belief that the war was illegal is sincere.

MR. BUCHMAN: That is right.

THE COURT: Then, does the Government contend that the reasonableness or the unreasonableness of his view, with respect to the legality of the war has any bearing on this case?

MR. MURPHY: Your Honor, it is completely irrelevant. I think the real issue is the reasonableness of the conduct as it relates to what the law requires.

THE COURT: I will rule on that question when we come to it.

If you contend that the reasonableness of his belief is an issue in the case, I will have to let in all of this evidence. We will be here and let people read all of these books, if you are going to contest the reasonableness of his views.

MR. MURPHY: We say it is irrelevant.

THE COURT: Do you contest it? Mr. Buchman and the other defendants think it is relevant. You think it is irrelevant. I have not ruled yet. I am not yet ruling [fol. 2] on the bearing it may have. It may have a bearing on the question of motive on the fourth count, as I have said before.

And on that ground and on other grounds, if I can be persuaded that there are other grounds later, I will admit it.

You agree he is sincere. You say you do not contest—

MR. MURPHY: No, Your Honor. We say that a reasonable man could have his views.

THE COURT: All right. Then, I take it that the Government is not contending that his views that the war is illegal are so unreasonable that a reasonable man could not have them.

I take it that means that the Government, insofar as that may be an issue in the case—which I am not ruling;

I am not saying that the reasonableness of his views have anything to do with the case, but if they do have—the Government is not contesting it, is that correct?

I notice Mr. Sachs, sitting in the second row, is nodding. Since he is the chief United States representative in this District, I take that to mean that I have correctly stated the Government's position.

Therefore, I will rule the book immaterial.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Cr. No. 68-237-W

WYZANSKY, D.J.

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

APPEARANCES:

JOHN WALL, ESQ., Assistant United States Attorney, counsel for the government.

JOHN G. S. FLYM, ESQ., counsel for the defendant.

Court Room No. 6,
Federal Building,
Boston, Mass.,

November 4, 1968.

[fol. 2] The COURT. Criminal No. 68-238-W, United States against John Heffron Sisson, Jr. Is this a long argument?

Mr. FLYM. I don't think so, your Honor.

The COURT: Go ahead. The Motion to Dismiss first.

Mr. FLYM. Yes, your Honor. May it please the Court, I have not received a brief from counsel for the government.

The COURT. I don't suppose the government has filed a brief. Have they?

Mr. WALL. No, sir.

Mr. FLYM. I understand no brief will be filed. That is, the government's position appears to be that all of these questions have previously been considered and determined adversely to the defendant in this case. The purpose of filing this motion, your Honor, and the purpose of filing a brief, was in essence to attempt to have a kind of pretrial conference because we intend to pro-

duce, at least offer such evidence at the time of the trial, and instead of consuming a great deal of time and expense we would like to resolve the question as to the nature of the evidence which will be admissible at the trial if it can be done.

I can very briefly capsulate the content of our motion [fol. 3] to dismiss if the Court would like me to do so. I have nothing to add substantially to what the brief contains, possibly with one exception, the exception having to do with the bearing of the illegality of the war.

I have in mind, your Honor, decisions of the Supreme Court dealing with violation of the trespass state

The COURT. The what statute?

Mr. FLYM. The trespass statute.

The COURT. What section?

Mr. FLYM. In an analogous area of the law, your Honor. There is a whole body of law which, as your Honor knows, is referred to as the sit-in cases in which violations, affirmative acts, conduct which was affirmative, and in violation of an act, was held to be justified, and the argument that there was a violation of the trespass statute was thought to be not really to the point because the trespass statute was invoked in behalf of an illegal purpose—in that case segregation. But we have other cases. In a recent case, the United States Supreme Court again held that the trespass statute could not be invoked to prevent picketers from picketing.

We have other cases. For instance, the New York Port Authority decision, in the 2d Circuit. I think the gist of these cases, your Honor, and a host of other cases [fol. 4] which could easily be presented to the Court, is that the violation of a given statute—in this particular case the failure to step forward, a request was made by the government to the defendant to step forward and he refused to step forward—no one is denying this is what in fact occurred—the question is whether there is any justification for his failure to step forward. We think that all of the questions raised, the illegality of the war, the reasonable belief of the illegality of the war, are supported by the most eminent authority, in so far as

international law is concerned, supported by independent, objective authority with respect to violations of the rules of warfare, supported by Congressional testimony having to do with the Tonkin Resolution. These certainly have a bearing with respect to justification.

Furthermore, the Constitutional right of conscience, your Honor, is an open question as is the question of peacetime conscription. As a matter of fact, Justices Cardozo and Brandeis thought that the issue was open, and there have been no decisions since that time expressing—.

The COURT. You mean no Supreme Court decisions.

Mr. FLYM. Yes, your Honor, that is correct. I believe there have been no decisions in this Circuit or District.

The COURT. I am not so sure about that.

[fol. 5] Mr. FLYM. In any event, it seems to me that all of these issues are open. We would propose to go forward with respect to preparing evidence on each of these points and proffer such evidence at the time of trial.

In so far as the motion for discovery is concerned I have inquired what the particular objections may be with respect to that motion. At least as of 1:30 today, your Honor, it was still unclear whether the government would object to any of the items which we sought to have produced for discovery.

The COURT. If your object is to uncover the government's strategy, I don't think that I will use this hearing for that purpose. I don't know of any reason why under any rule of Court I should do that. Some of the points raised in your motion, for example, point No. 2, That the defendant reasonably believes the government's military involvement in Vietnam is illegal, are points which cannot be raised in the way that you propose to raise them, because that does not appear on the face of the indictment.

Mr. FLYM. That is quite correcr, your Honor.

The COURT. So there is nothing to point 2. As to point 1, one of your difficulties, I supoose, is that you

cannot show, can you, that a person who is, as a matter of fact, inducted into the Army or Military Service will [fol. 6] indeed serve in Vietnam?

Mr. FLYM. I don't think that is required, your Honor.

The COURT. Well, how can he show that he has such a standing as to question the involvement in the Vietnam war? I am not saying that you haven't got a cognate point, which might be that the draft is invalid for other reasons.

Mr. FLYM. Your Honor, I believe that if anyone has standing with respect to the illegality of the war, this defendant does.

The COURT. At this stage when he doesn't know whether he, for example, will be sent to Germany or to Atlanta?

Mr. FLYM. I think so, your Honor. The decisions, recent decisions specifically decline interlocutory relief, injunctive relief with respect to one man who—

The COURT. I don't think you ought to move from interlocutory relief or injuctive relief to criminal process. Is there anything which supports your view that in connection with an order to report or an order to step forward a person who objects can object on the ground that he is being required to take the first step toward fighting in Vietnam?

[fol. 7] Mr. FLYM. I think so, your Honor.

The COURT. How do you know that? How does he know that? How do I know that?

Mr. FLYM. I think, first of all, there is authority. Secondly, I don't think it is important.

The COURT. That is another question. But he doesn't know, does he?

Mr. FLYM. Well, statistically, he could establish the chances are he would go. The basic argument, your Honor, is that if the war is illegal, it is demonstrable that the draft is being used to foster this illegal war.

The COURT. I didn't agree or disagree with what you just said. I am raising the problem as to whether he has the standing to raise that question now or whether his standing to raise the question comes at a later stage.

Mr. FLYM. I don't think so, your Honor, because I believe that to deny him the opportunity to raise it at this point in time would be to deny him the opportunity to raise it at all probably.

The COURT. Why do you say that? Because it may not be that if he were inducted, and if he were not kept within the United States, and if he were not sent to some European or African or what-not place but were indeed sent to Vietnam, then it might be that when that order [fol. 8] directly affected him and issued to him he would have a standing. Are you sure he wouldn't have a standing?

Mr. FLYM. Your Honor, I believe his standing at that point would be no better than his standing today.

The COURT. Well, do you concede that he would have a standing to raise the question at that point?

Mr. FLYM. Not if he has no standing today, your Honor.

The COURT. Well, it certainly has focused on him and his future in a way that it has not yet focused, isn't that right?

Mr. FLYM. Well, your Honor, I don't think so. I think the focus is not sufficiently sharp at that time, sufficiently sharper at that time than it is today. He would have no standing under that reasoning until he was actually ordered to shoot at a Vietnamese, for instance.

The COURT. Well, that might be too late. Presumably at that moment he would be outside the jurisdiction of a United States District Court.

Mr. FLYM. He probably is at the time he—

The COURT. Is he outside the jurisdiction of the United States District Court at the time that he is given a direct order to proceed to Vietnam?

Mr. FLYM. My understanding, your Honor, is that [fol. 9] there is a case from the District of Colorado which so held.

The COURT. Don't you think you better brief that so that I am persuaded of the correctness of your point that he now has a standing? That is the only question that I put to you, you realize, not the question as to

whether or not the substantive issue you are trying to raise is or is not well founded but whether at this moment he has a standing.

Are you associated with other people in connection with the preparation of this type of case?

Mr. FLYM. Yes, I am, your Honor.

The COURT. Are you working with some kind of gorup, which I will loosely call a draft counseling group?

Mr. FLYM. Loosely call—? It isn't really a draft counseling group.

The COURT. What is it?

Mr. FLYM. It is the Committee For Legal Research On The Draft.

The COURT. Haven't you dug into the point of locus standi?

Mr. FLYM. No.

The COURT. Don't you think you ought to?

Mr. FLYM. I would very much appreciate the opportunity.

[fol. 10] The COURT. I will give you the opportunity to do that because I think that that is the first thing for you to persuade me of—if you are in a standing position to raise the issue, or your client is.

Mr. FLYM. Yes, your Honor.

The COURT. I am not persuaded as of yet. I have an open mind but I am not persuaded. That relates to both point 1 and point 3. Point 2 is plainly premature because nobody can test the issue as to whether defendant reasonably believes the government's military involvement in Vietnam is illegal without knowing what he reasonably believed, and what he believed is a question of evidence and not a question which appears on the face of the indictment.

Mr. FLYM. If I may remark to that point, your Honor? My sole purpose in raising the point at this time was again in the interest of economy. It was not clear at the time I filed the motion that the government would challenge this fact. That is, they may concede—

The COURT. I will give you the opportunity to hear that. I shall perhaps not be surprised and maybe you won't either by what the government's position is going to be here. All right. Mr. Wall.

Mr. WALL. Your Honor, with regard to the motion for discovery and inspection—

[fol. 11] The COURT. On the motion to dismiss the indictment, you do oppose it, of course?

Mr. WALL. Yes, sir.

The COURT. Well, I am not at this stage going to deny the motion. I am going to say that the second ground is without merit, on the motion to dismiss the indictment; on the grounds 1 and 3 I would like to be advised as to why the question has not been prematurely raised with respect to 1 and with respect to 3, and I will allow both sides a week to brief that matter. A week means Tuesday of next week because Monday is regarded as a holiday—especially appropriate in this kind of case.

On the motion with respect to discovery, do you want to say anything?

Mr. WALL. Your Honor, with regard to the week I wonder if I might have a little longer?

The COURT. You may have two weeks from today, yes.

Mr. WALL. Thank you, your Honor.

The COURT. Now what about the motion for discovery and inspection? Do you oppose that?

Mr. WALL. The government agrees to 1, 2, and 3, your Honor. No. 4, the correspondence mentioned therein would be contained in the registrant's file. The govern-

[fol. 12] ment agrees to 5, 6 and 7. No. 8, the government opposes for the reason set out in the regulations, at 1606.62(c), which says, "In accordance with the reasoning of Federal Personnel Manual Letter 7-11-8 issued by the Civil Service Commission, the home address and other personal data concerning the officials designated in (b) above will not be released unless (a) the person to whom the data relates consents to such release or (b) the Board Chairman determines in writing after consultation with the person to whom the data relates the disclosure would not harm such person and would not constitute a clearly unwarranted invasion of his personal privacy." The local board members are prohibited by regulation, the local boards are prohibited by regulation from releasing that information, your Honor.

The COURT. I don't understand why 8 is thought to be relevant to this particular case. Will you tell me why?

Mr. FLYM. Yes, your Honor. The Selective Service Act relies almost entirely, in so far as fact finding is concerned, on the action of local board members, and in particular the regulations require that there be no direct ties between the local board members and the military.

There are other requirements, such as age, for instance, and length of service on the local board, which for whatever reasons have been made prerequisites for serv-
[fol. 13] ing on the board, and it seems to me that the members—

The COURT. That certainly relates to 8, the military status point. They are required to be citizens, too, is that right?

Mr. FLYM. Yes.

The COURT. And the names, of course, are relevant. But why the address, age and date of appointment?

Mr. FLYM. Well, the date of appointment is significant only with respect to the 25 year service limitation.

The COURT. That is a limitation, too?

Mr. FLYM. Yes, your Honor.

The COURT. All right. I think that is relevant.

Mr. FLYM. The age is also. There is also a requirement as to a maximum age. The names and addresses are solely for evidentiary purposes.

The COURT. As to the address, you mean to check the accuracy of the statements?

Mr. FLYM. Yes. We would rely on the government's representations as to these items.

The COURT. I am going to direct that the government furnish the information in 8 because if there were indeed with respect to the accuracy of the Board a question as to whether the members of the Board were qualified in accordance with the rules and regulations, it is a
[fol. 14] point which could reasonably be challenged.

Mr. WALL. Your Honor, may the government be excused from supplying the addresses?

The COURT. Well, as to the addresses, that is not really pressed, is it?

Mr. FLYM. No, your Honor.

The COURT. All right. (a), (c), (d), (e) and (f). What about 9?

Mr. WALL. No. 9, your Honor, the local Board memorandums are available for examination by counsel at Selective Service headquarters, if he wants to see them, but I know he already has them.

The COURT. Do you have them already?

Mr. FLYM. Your Honor, I have what is called the Selective Service Reporter. I have discussed the question of the accuracy of the local Board memorandums with my brother, and he agrees that he will not challenge—

Mr. WALL. No, I do not agree that your copy of the Selective Service law reports—I don't agree that his copy is going to be absolutely correct. What I do say, your Honor, is that according to regulation 1606.57 a complete copy of the local Board memorandums can be acquired from the Government Printing Office.

If counsel wants to go over to the Selective Service [fol. 15] headquarters and look at them there, fine, but I don't think the government should be required to supply copies of them.

The COURT. If they are all public documents then I agree there is no need to impose upon the government the purchase price or the cost of supplying them. It is up to you to get them. If they are available, then they stand no different from statutes.

Mr. FLYM. I agree. It was my understanding they weren't available.

The COURT. Mr. Wall says they are.

Mr. WALL. No. 10 makes the forms a part of the regulations.

The COURT. That is covered by my prior ruling.

Mr. WALL. Yes, sir.

The COURT. That covers everything, does it?

Mr. FLYM. Yes, your Honor.

The COURT. All right.

Mr. FLYM. Your Honor, one point of clarification. Is the two weeks from today also Tuesday?

The COURT. No, Monday. Two weeks from today is a Monday.

* * * *

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HIS MOTION TO DISMISS.

On November 4, 1968, when the first hearing was held on defendant's Motion to Dismiss the indictment returned against him, the Court invited both parties to submit briefs on the question of defendant's "standing" to seek an adjudication of the illegality of the Vietnam conflict as justification for his refusal to obey an order for induction into the armed forces of the United States.

As previously stated in the course of oral argument on November 4, the purpose of defendant's Motion to Dismiss is to obtain a determination as to the legal sufficiency of certain defenses. Consequently, a large part of the Memorandum of Points and Authorities submitted in support of the Motion to Dismiss is devoted to an outline of the kind of evidence which would be offered at the time of the trial to substantiate these defenses. This outline hardly exhausts the evidence which defendant may present at his trial. For instance, if necessary defendant will establish that he probably would not have been ordered to report for induction were it not for the Vietnam war.

However, independently of such facts, this memorandum will show that defendant has standing to seek an adjudication that the Vietnam war is illegal.

A. *A Criminal Defendant is Entitled to Raise all Defenses.*

In his classical article "The Power of Congress to limit the Jurisdiction of Federal Courts: An Exercise in Di-

alectics," 66 Harv. L. Rev. 1362 (1953), Henry Hart maintains that the doctrine of exhaustion of remedies marks the maximum inroad on the right of a criminal defendant to challenge the legality of an order he is accused of violating. The following colloquy, while of general applicability, is particularly addressed to one of the landmark decisions involving the selective service laws, *Estep* v. *United States*, 327 U.S. 114 (1946):

> "Q. Doesn't that pretty well destroy your notion that there has to be some kind of reasonable means for getting a judicial determination of questions of law affecting liability for criminal punishment? *All Congress has to do is to authorize an administrative agency to issue an individualized order, make the violation of the order a crime in intself, and at the same time immunize the order from judicial review. On the question of the violation of the order, all the defendant's rights are preserved in the criminal trial, except that they don't mean anything.* . . .
>
> A. Stop and think before you say that. Except for two Justices who are now dead, the whole Court dealt with the question as if it were merely one of statutory construction. *Three Justices of the Supreme Court of the United States were willing to assume that Congress has power under Article I of the Constitution to direct courts created under Article III to employ the judicial power conferred by Article III to convict a man of a crime and send him to jail without his ever having had a chance to make his defenses. No decision in 164 years of constitutional history, so far as I know, had ever before sanctioned such a thing. Certainly no such decision was cited.* For these three didn't even see it as a problem. There is ground to doubt whether the first three in the majority did either.
>
> Bear in mind that the three dissenters from the court's construction expressly recognized that the order of induction might have been erroneous in law. They said that the remedy for that was habeas cor-

pus after induction. They seemed to say that the existence of the remedy of habeas corpus saved the constitutionality of the prior procedure. That turns an ultimate safeguard of law into an excuse for its violation. And it strikes close to the heart of one of the main theses of this discussion—that so long at least as Congress feels impelled to invoke the assistance of courts, the supremacy of law in their decisions is assured." 66 Harv. L. Rev. 1362, 1380, 1382, 1383. (Emphasis added).

Mr. Justice Murphy wrote a concurring opinion in *Estep* v. *United States, supra,* passionately and eloquently articulating the right of a criminal defendant ". . . to present every possible defense to a criminal charge . . .":

> "If, as I believe, judicial review of some sort and at some time is required by the Constitution, then when and where can these petitioners secure that review? They have not had a prior chance to obtain review of the induction orders; nor will they subsequently be accorded the opportunity to test their contentions in court. *It is no answer that they should have pursued different courses of action and secured writs of habeas corpus after induction. Due process of law is not dispensed on the basis of what people might have or should have done. The sole issue here is whether due process of law is to be granted now or never.* The choice seems obvious.
>
> By denying judicial review in this criminal proceeding, the courts below in effect said to each petitioner: You have disobeyed an allegedly illegal order for which you must be punished without the benefit of the judicial review required by the Constitution, although if you had obeyed the order you would have had all the judicial review necessary. I am at a loss to appreciate the logic or justice of that position. It denies due process of law to one who is charged with a crime and grants it to one who is obedient. It closes the door of the Constitution to a person whose liberty is at stake and whose need for due process

of law is most acute. In short, it condemns a man without a fair hearing.

There is something basically wrong and unjust about a juridical system that sanctions the imprisonment of a man without ever according him the opportunity to claim that the charge made against him is illegal. I am not yet willing to conclude that we have such a system in this nation. Every fiber of the Constitution and every legal principle of justice and fairness indicate otherwise. *The reports are filled with decisions affirming the right to a fair and full hearing, the opportunity to present every possible defense to a criminal charge and the chance at some point to challenge an administrative order before punishment.* Those rudimentary concepts are ingrained in our legal framework and stand ready for use whenever life or liberty is in peril. The need for their application in this instance seems beyond dispute.

We must be cognizant of the fact that we are dealing here with a legislative measure born of the cataclysm of war, which necessitates many temporary restrictions on personal liberty and freedom. *But the war power is not a blank check to be used in blind disregard of all the individual rights which we have struggled so long to recognize and preserve.* It must be used with discretion and with a sense of proportionate values. In this instance it seems highly improbable that the war effort necessitates the destruction of the right of a person charged with a crime to obtain a complete review and consideration of his defense. *As long as courts are open and functioning judicial review is not expendable.*

All of the mobilization and all of the war effort will have been in vain if, when all is finished, we discover that in the process we have destroyed the very freedoms for which we fought." 327 U.S. 114, 130-132. (Emphasis added).

In short, since the Government asks this Court to enforce a governmental order, this Court has jurisdiction

to adjudicate the legality of that order, and defendant is entitled to such an adjudication. If the illegality of the Vietnam war is, in Mr. Justice Murphy's phrase, a "possible defense", defendant must be afforded the opportunity to present that defense.

B. *To Require Defendant to Become a Member of the Military Is to Deny Him All Opportunity to Obtain an Adjudication of the Legality of the Vietnam War.*

Defendant is forever denied the opportunity to challenge the legality of the Vietnam war if he is required to become a member of the military and await orders for a Vietnam assignment before making his challenge.

In *United States* v. *Johnson*, 18 USCMA 246, 38 CMR 44 (1967), the highest military court held:

> "Under domestic law, the presence of American troops in Vietnam is unassailable. *United States* v. *Smith*, 13 USCMA 105, 32 CMR 105. The legality under internatinal law of the American presence in Vietnam is not a justiciable issue. As long ago as *Martin* v. *Mott*, 12 Wheat 19, 29 (U.S. 1827), the Supreme Court rejected the idea that the orders of the President as Commander-in-Chief may be so questioned. . . ."

Thus, it is plain that any attempt to convince a military court that the Vietnam was is illegal, under either domestic or international law, would be futile.

Once in the military, defendant would not be able to challenge an order, including an order assigning him to duty in Vietnam, except by habeas corpus review of a court martial conviction. *Luftig* v. *McNamara*, 373 F. 2d 664 (D.C. Cir. 1967), cert. den. *sub nom*, *Luftig* v. *McNamara*, 389 U.S. 934; *Orloff* v. *Willoughby*, 345 U.S. 83 (1953); *Levy* v. *Cochran*, 389 F.2d 929 (D.C. Cir. 1967); *Noyd* v. *McNamara*, 267 F.Supp. 701 (D. Colo. 1967), aff'd, 378 F.2d 537 (10th Cir. 1967), cert. den., 19 L.ed ad 667 (1967). And a court martial proceeding is hardly the equivalent of its civilian counterpart, as

the Supreme Court's detailed analysis in *Reid* v. *Covert*, 354 U.S. 1 (1956) emphasizes:

> Courts-martial are typically ad hoc bodies appointed by a military officer from among his subordinates. They have always been subject to varying degrees of 'command influence.' In essence, these tribunals are simply executive tribunals whose personnel are in the executive chain of command. Frequently, the members of the court-martial must look to the appointing officer for promotions, advantageous assignments and efficiency ratings—in short, for their future progress in the service. *Conceding to military personnel that high degree of honesty and sense of justice which nearly all of them undoubtedly have, the members of a court-martial, in the nature of things, do not and cannot have the independence of jurors drawn from the general public or of civilian judges.*" 354 U.S. 36. (Emphasis added).

Closing the circle of military authority which surrounds members of the armed forces is the fact that civilian review of a court-martial conviction is exceedingly narrow. As expressed by Mr. Justice Minton in his concurring opinion in *Burns* v. *Wilson* 346 U.S. 137 (1953).

> "If error is made by the military courts, to which Congress has committed the protection of the rights of military personnel, that error must be corrected in the military hierarchy of the courts provided by Congress. *We have but one function, namely, to see that the military court has jurisdiction,* not whether it has committed error in the exercise of that jurisdiction." 346 U.S. 137, 147. (Emphasis added).

While the standard for review adopted by the Court in *Burns* v. *Wilson, supra,* appears somewhat broader (". . . the scope of matters open for review has always been more narrow than in civil cases . . ." but civil courts may determine whether the military decision has given fair consideration to the allegations set forth in the petition for writ of habeas corpus), such review does not extend to weighing the evidence considered by the court

martial. In short, habeas corpus review cannot guard against a prejudiced military determination; it scrutinizes, not the merits, but the process used in reaching the determination.

Manifestly, the only forum in which defendant can seek an adjudication of the illegality of the Vietnam war is this very Court. Even if prior resort to the military were desirable, defendant is not under obligation to exhaust military channels. See *Smith* v. *United States*, 199 F.2d 377, 382 (1st Cir. 1952); *United States* v. *McCrillis*, 200 F.2d 884, 886 (1st Cir. 1952), where the Court held:

> ". . . a defendant . . . charged with having violated an order . . . is [not] precluded from setting up the defense that the . . . order is invalid, merely because the defendant has failed to make use of an available administrative procedure by which he might have obtained administrative action to set aside the . . . order."

To compel defendant to submit to military justice, however, is not desirable. Not only would it deprive defendant of his right to a jury trial; not only would it be futile because the highest military court has already passed adversely on the substance of defendant's contentions; * and not only would it expose defendant to the

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* Interestingly, the *Johnson* case, *supra*, relies for its sweeping conclusions on two cases which provide very weak support. The *Smith* decision is a prolix opinion which mentions in passing that the President is Commander-in-Chief; the facts in *Smith* are wholly unrelated to the questions at issue in Johnson. As for the *Martin* v. *Mott* case, it involved a 1795 statute granting a very limited authority to the President to call the militia in the event of invasion or imminent danger thereof. The Court held that the nature of the power permitted no conclusion other than that the President was to determine whether invasion was imminent. Despite the narrow scope of the power there involved—which contrasts sharply with the military court's notion of the President's power as Commander-in-Chief, Mr. Justice Story, writing for the Court, observed:

> "A free people are naturally jealous of the exercise of military power; and the power to call the militia into actual service is certainly felt to be one of no ordinary magnitude."

risk of prejudiced factual determinations with no prospect of civilian review; it would also be far more disruptive of the military; it would disrupt military discipline; it would disrupt military plans for deployment of personnel; it would waste military resources expended in training a soldier who will not fight. It would require the empty ritual of having the army administer, and the defendant take, the oath specified in AR 601.270, ¶ 37b: ". . . I will obey the orders of the President of the United States and the orders of the officers appointed over me . . ." Therefore, both parties have a mutual interest in having the legality of the Vietnam war adjudicated at this time.

C. *In View of the Important Role of The Judiciary as a Legitimizing Organ for Governmental Action, this Court should Adjudicate the Legality of the Vietnam War.*

Criminal prosecutions involving selective service law have increased from 107 for the months of July, August and September, in 1965, to 221 for the same three months in 1966, to 249 for the same quarter of 1967 and to 658 for the same quarter of 1968. The figure of 658 for July through September 1968 represents 8% of all criminal prosecutions in the federal courts during those three months. Clearly, the government is relying very substantially on the federal courts to enforce the administration of the selective service system. If the function of the federal courts is to be worthy of respect, then the courts must exercise their power to review the legality of the orders which the government seeks to enforce.

As explained by Charles L. Black, Jr. in *The People and the Court, Judicial Review in a Democracy* 52-53, 223 (1960):

> I have suggested that the most conspicuous function of judicial review may have been that of legitimatizing rather than that of voiding the actions of government. But one urgent warning must be added.
>
> The power to validate is the power to invalidate. *If the Court were deprived, by any means, of its real*

and practical power to set bounds to governmental action, or even of public confidence that the Court itself regards this as its duty and will discharge it in a proper case, then it must certainly cease to perform its central function of unlocking the energies of government by stamping governmental actions as legitimate. If everybody gets a Buck Rogers badge, a Buck Rogers badge imports no distinction. The Court may go thirty or forty years without declaring an Act of Congress unconstitutional; that means nothing, for it is scarcely to be looked for that Congress will pass any given annual or decennial quota of statutes that the Court will regard as invalid.

But if it ever so much as became known—even as a matter of tacit understanding in the profession and on the Court, for such a secret could not be kept from the people—that the Court would not seriously ponder the questions of constitutionality presented to it and declare the challenged statute unconstitutional if it believed it to be so, then its usefulness as a legitimatizing institution would be gone.

Judicial review has two prime functions—that of imprinting governmental action with the stamp of legitimacy, and that of checking the political branches of government when these encroach on ground forbidden to them by the Constitution as interpreted by the Court. These two functions are not independent of each other; on the contrary, they may be looked on as different aspects of the same function. The investment of a tribunal with the checking function almost necessarily makes it a legitimating organ as to those governmental actions (the great majority, in our history) to which it finds no convincing constitutional objection. *On the other hand, the legitimating function cannot be performed (unless through a public deception which must be temporary in its success) by a tribunal not clothed with the conceded power to invalidate, for legitimation means decision, and decision is not decision unless it can go either way.*" (Emphasis added).

It is perhaps for this reason that Mr. Justice Black has criticized the doctrine that constitutional questions should be avoided where a non-constitutional ground for decision can be found. In *A Constitutional Faith*, pp. 19-20 (1968), Mr. Justice Black explains:

> "The essential protection of the liberty of our people should not be denied them by invocation of a doctrine of so-called judicial self-restraint. This term has been made an alluring one by its worshippers connoting noble judicial conduct, somewhat as the term 'judicial activism' has been used to connote something ignoble. But, as I have tried to make clear, when judges have a constitutional question in a case before them, and the public interest calls for its decision, refusal to carry out their duty to decide would not, I think, be the exercise of an enviable 'self-restraint.' Instead I would consider it to be an evasion of responsibility. In sum, I think determining when a judge shall decide a constitutional question calls for an exercise of sound judicial judgment in a particular case which should not be hobbled by general and abstract judicial maxims created to deny litigants their just deserts in a court of law, perhaps when they need the court's help most desperately.

The relevance of these broad principles to the present case, the necessity for this Court to adjudicate the legality of the Vietnam war, is clear in the perspective given by Mr. Chief Justice Warren in *The Bill of Rights and the Military*, printed in Cahn, *The Great Rights* (1963):

> "But the people of the colonies had long been subjected to the intemperance of military power. Among the grievous wrongs of which they complained in the Declaration of Independence were that the King had subordinated the civil power to the military, that he had quartered troops among them in times of peace, and that through his mercenaries he had committed other cruelties. Our War of the Revolution was, in good measure, fought as a protest against standing armies. (p. 92)

Their apprehensions found expression in the diffusion of the war powers granted the Government by the Constitution. *The President was made the Commander-in-Chief of the armed forces. But Congress was given the power to provide for the common defense, to declare war, to make rules for the Government and regulation of the land and naval forces, and to raise and support armies, with the added precaution that no appropriation could be made for the latter purpose for longer than two years at a time —as an antidote to a standing army.* Further, provision was made for organizing and calling forth the state militia to execute the laws of the Nation in times of emergency . . . it is not unreasonable to believe that our Founders' determination to guarantee the preeminence of civil over military power was an important element that prompted adoption of the Constitutional Amendments we call the Bill of Rights. (pp. 93, 94)

Consequently, if judicial review is to constitute a meaningful restraint upon unwarranted encroachments upon freedom in the name of military necessity, *situations in which the judiciary refrains from examining the merit of the claim of necessity must be kept to an absolute minimum.* (p. 102)

Our history has demonstrated that *we must be as much on guard against the diminution of our rights through excessive fears for our security and a reliance on military solutions for our problems by the civil government, as we are against the usurpation of civil authority by the army.* That is the important lesson of the Court cases, most of which have arisen not through the initiative of the military seeking power for itself, but rather through governmental authorization for intervention of military considerations in affairs properly reserved to our civilian institutions. (pp. 111, 112)

President Eisenhower, as he left the White House only a year ago, urged the American people to be alert to the changes that come about by reason of

the coalescence of military and industrial power. His words were these:

> [T]his conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence —economic, political, even spiritual—is felt in every city, every state house, every office of the Federal Government. . . . [W]e must not fail to comprehend . . . [the] grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society. [W]e must guard against the acquisition of unwarranted influence . . . by the military-industrial complex. . . .
>
> We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. *Only an alert and knowledgeable citizenry can compel the proper meshing of the . . . machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.*" (p. 112)

To recapitulate, judicial review is a cornerstone of our democracy. It is a power which must be used, particularly to review the exercise of military power when challenged, as defendant challenges the legality of the Vietnam war on the basis, in part, that it has not been declared by Congress. The critical importance of defendant's challenge, and the pressing need for this Court to pass on its merits, is indicated by the following statements of Abraham Lincoln and Justice Story. Abraham Lincoln said:

> The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved so so frame the

> Constitution that no one man should hold the power of bringing this oppression upon us.

E. Corwin, *The President: Office and Powers*, 180 (4th ed. 1964).

Similarly, Mr. Justice Story has said:

> [t]he power of declaring war is not only the highest sovereign prerogative; but it is in its own nature and effects so critical and calamitous, that it requires the utmost deliberation, and the successive review of all the councils of the nation. War, in its best estate, never fails to impose upon the people the most burthensome taxes, and personal sufferings. It is always injurious, and sometimes subversive of the great commercial, manufacturing, and agricultural interests. Nay, it always involves the prosperity, and not unfrequently the existence, of a nation. It is sometimes fatal to public liberty itself, by introducing a spirit of military glory, which is ready to follow, wherever a successful commander will lead; and *in a republic, whose institutions are essentially founded on the basis of peace, there is infinite danger that war will find it both imbecile in defense, and eager for contest.* Indeed, the history of republics has but too fatally proved, that they are too ambitious of military fame and conquest, and too easily devoted to the views of demagogues, who flatter their pride, and betray their interests.

J. Story, *Commentaries on the Constitution of the United States*, 89-90 (2nd ed. 1851).

D. *Defendant is not Premature in Challenging the Legality of the Vietnam War.*

In *Mitchell* v. *United States*, 369 F.2d 323 (2d Cir. 1966), *cert. den.*, 386 U.S. 972 (1967), the Court held that one who had refused to submit to induction was not premature in challenging the legality of the Vietnam war.

However, the Court in *Mitchell* held, without citation of authority, that illegality of the war was no defense because,

> *"Regardless of the proof that appellant might present to demonstrate the correlation between the Selective Service and our nation's efforts in Vietnam,* . . . the congressional power 'to raise and support armies' . . . is a matter quite distinct from the use which the Executive makes of those . . . have been inducted into the Armed Forces." 369 F.2d 323, 324. (Emphasis added)

Surely that cannot be the law. Under Title 50 App. § 454(a), "The President is authorized, from time to time, whether or not a state of war exists, to select and induct into the Armed Forces . . . such number of persons as may be required. . . ." The important fact which the *Mitchell* Court refused to recognize is that the power to raise armies has been delegated by Congress to the President, so that the President determines the manpower quotas which the local boards (including defendant's local board) are required to meet, and it is the President who then uses this manpower. The powers may in law be distinct, but they are in fact exercised by the President, and the issue is whether the power to induct is being used for the purpose of waging an illegal war. The Supreme Court not infrequently has invalidated a statute because of its purpose and effect. See e.g. *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Griffin* v. *County School Board of Prince Edwards County*, 377 U.S. 218 (1964); Bickel, *The Least Dangerous Branch*, 208-221 (1962). Here, the simple and sufficient allegation is that an otherwise valid statute is being abused to accomplish an illegal end.

One technical point may be worth mentioning: the *Mitchell* case is distinguishable on its facts from the case at bar. In *Mitchell*, the defendant did not even report to the induction station, whereas the defendant herein did report—thereby giving the army the opportunity to reject him.

In *The War in Viet Nam: Unconstitutional, Justiciable, and Jurisdictionally Attackable*, 16 Kan.L.Rev. 449 (1968), Lawrence R. Velvel argues persuasively that the ordinary taxpayer has standing to challenge the legality

of the Vietnam war even under the decision of *Frothingham* v. *Mellon*, 262 U.S. 447, 448 (1923). Velvel rests his conclusion on the decisions in *Doremus* v. *Board of Eduction*, 342 U.S. 429, 434-5 (1952); *Everson* v. *Board of Education*, 342 U.S. 485 (1952); *Wieman* v. *Updegraf*, 344 U.S. 183 (1952); *Baker* v. *Carr*, 369 U.S. 186 (1962); *NAACP* v. *Alabama*, 357 U.S. 449, 458-60 (1958); *Barrows* v. *Jackson*, 346 U.S. 249, 255-59 (1953); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Griswold* v. *Connecticut*, 381 U.S. 479, 481 (1965); and *Flast* v. *Cohen*, 392 U.S. 83 (1968). Velvel estimates that the Vietnam war is costing each citizen 100 to 125 dollars each year. It would be anomalous if as a taxpayer or citizen defendant had standing to challenge a war which deprived him of 100 dollars, but as an eligible draftee he could not challenge the same war which threatened to deprive him of his liberty.

It would indeed be anomalous if the power of judicial review was utilized to invalidate an order of the President taking property, *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1951), but the same protection denied where an order of the President takes the liberty of an individual. In the *Estep* case, Mr. Justice Murphy remarked: "This principle [judicial review] has been applied many times in the past for the benefit of corporations . . .. (Citations omitted) I assume that an individual is entitled to no less respect." 327 U.S. at 127.

It would be anomalous if parties are entitled to declaratory relief in a variety of situations, despite the absence of a threat of enforcement of the statute of which they complain, [e.g. *Katzenbach* v. *McClung*, 379 U.S. 294 (1964); *Adler* v. *Board of Education*, *supra*; *Currin* v. *Wallace*, 306 U.S. 1 (1939); *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936); *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926); *Pierce* v. *Society of Sisters*, *supra*; and *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923)], but defendant, who is clearly threatened, not permitted to defend his liberty by establishing the unconstitutionality of the statute which threatens him.

Moreover, as Mr. Justice Frankfurter stated in his concurring opinion in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 156 (1951):

> "If the ultimate impact of the challenged action on the petitioner is sufficiently probable and not too distant, and if the procedure by which that ultimate action may be questioned is too onerous or hazardous, *'standing' is given to challenge the action at a preliminary state.*" 341 U.S. 123, 156 (Emphasis added).

That formula fits defendant precisely: the impact of the Vietnam war on defendant is certain and immediate, and requiring defendant to join the military would be both onerous and hazardous in the extreme.

Hence, there are abundant reasons for agreeing with the *Mitchell* Court that the defense of the illegality of the Vietnam war, if it be a defense, is not premature when raised by a defendant accused of refusing to obey an induction order.

Further reasons could be conceived. By analogy to the doctrine of pendent jurisdiction, e.g. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725 (1966), the Court should exercise its discretion to hear all defenses which entail related factual issues. Defendant clearly has standing to defend on the ground that peace-time conscription is unconstitutional, and that defense requires a legal/factual determination as to whether conscription may be used to provide manpower for the Vietnam conflict, viewing the conflict as an undeclared war or viewing the conflict as a war in violation of international law. Similarly, defendant unquestionably has standing to show that he reasonably believed the war to be illegal, and that defense is based on facts tending to show that a reasonable man could view the Vietnam war as illegal. Again, defendant has standing to defend on the basis of his constitutional right of conscience, and this defense requires a showing that the right of conscience is violated by compelling military service in an illegal war.

Further buttressing defendant's effort to challenge the legality of the Vietnam war at this time is the fact that defendant would forfeit several of the defenses which he is entitled to raise at this time (in addition to the defenses described in the preceding paragraph, there may

be a number of technical defenses touching defendant's classification procedure) if he permitted himself to be inducted. There is no justification for requiring defendant to choose certain defenses and waive others. Defendant is entitled to raise all possible defenses in connection with this prosecution.

CONCLUSION

The question of defendant's standing to obtain an adjudication of the legality of the Vietnam war is not without difficulty. But the difficulty is attributable, not to the technical requirements of standing, but to the merits of the defense. Defendant amply meets the technical requirements: as a criminal defendant, he has the requisite interest and is entitled to raise all defenses; the facts relevant to the legality of the Vietnam war are as developed now as they can ever be; defendant would have no opportunity to litigate the legality issue in the military; defendant has standing to raise certain defenses at this time which would be waived if he joined the military; and defendant has standing to present various defenses at this time which are related to the defense based directly on the illegality of the Vietnam war.

The difficulty lies in the merits, but it is a difficulty which must be resolved in favor of adjudicating the legality of the Vietnam war. It must be so resolved to preserve the function of the judiciary, not only to safeguard the constitutional rights of individuals, not only to keep the military subservient to the civilan institutions in our society, not only to guard against encroachment by the Executive branch into the powers reserved for the Legislative branch of our government, not only to do justice by subordinating executive and legislative action to the supremacy of law, but also by legitimizing the lawful acts of the executive and legislative branches.

Respectfully submitted

/s/ John G. S. Flym
JOHN G. S. FLYM

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

GOVERNMENT'S MEMORANDUM OF LAW

I. *This Court Has No Jurisdiction To Examine Questions Concerning The "Legality" Of The Viet Nam Conflict, Because The Exercise Of Executive And Legislative Powers, In The Context Of The Instant Case, Is Not Subject To Judicial Examination.*

The contentions which defendant would raise are political issues involving the Executive's discretionary guidance of this nation's foreign policy, aided by the Congress in its appropriate Constitutional spheres. As such, these contentions are not subject to examination by this Court.

The Courts have consistently recognized the division between their functions and those of the Executive and Legislative branches of the Government. As early as 1803, the Supreme Court stated in *Marbury* v. *Madison*, 5 U.S. 87, 1 Cr. 137 (1803):

> By the Constitution of the United States, the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. (5 U.S. at 104, 1 Cr. at 165-166)

And *Marbury* states the role of the judiciary to be:

> to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. (5 U.S. at 107, 1 Cr. at 170)

The defendant seeks to challenge, by way of defense, the wisdom of this country's engagement in foreign affairs, the propriety of its international decisions, and the constitutionality of its actions in this field. But such matters fall completely within the ambit of the traditional legal doctrine of the "political question," over which the judiciary has no jurisdiction.

In *Baker* v. *Carr*, 369 U.S. 186 (1962), the Supreme Court enunciated the "political question" doctrine (at page 217):

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

The matters which defendant seeks to raise fit squarely within this formulation of the non-justiciable "political question". The presence of American troops in Viet Nam is a matter of foreign policy, the setting of which policy the Constitution has committed to the Executive Branch and Congress according to their respective Constitutional responsibilities. Whether, and to what extent, our forces should be deployed in that troubled area is a question which cannot be answered by judicially discoverable standards; rather, it is impossible of resolution "without an initial policy determination of a kind clearly for non-judicial discretion". With all due deference, for the Court to attempt an independent resolution of the issue, would express a "lack of the respect due coordinate branches of government".

Concerning judicial intervention in the delicate and discretionary area of foreign policy, the Supreme Court said in *Chicago & Southern Air Lines* v. *Waterman Steamship Corp.*, 333 U.S. 103 (1948) (at page 111):

> The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit *in camera* in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.[1]

In affirming the dismissal of a suit which had been brought by an Army private to enjoin the Secretary of

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[1] Citing *Coleman* v. *Miller*, 307 U.S. 433 (1939); *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304 (1936); *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918). See also *Williams* v. *Suffolk Ins. Co.*, 38 U.S. 357, 13 Pet. 415 (1839); *Eminente* v. *Johnson*, 361 F.2d 73 (D.C. Cir., 1966), *cert. denied* 385 U.S. 929 (1966); *Pauling* v. *McNamara*, 331 F.2d 796 (D.C. Cir., 1963), *cert. denied* 377 U.S. 963 (1964); *Pauling* v. *McElroy*, 278 F.2d 252 (D.C. Cir., 1960), *cert. denied* 364 U.S. 835 (1960); *Worthy* v. *Herter*, 270 F.2d 905 (D.C. Cir., 1959), *cert. denied* 361 U.S. 918 (1959).

The analogy from the international forum of the United Nations is instructive. Questions concerning the legality of military actions are considered by the Security Council, not a judicial but a highly political body.

Defense and the Secretary of the Army from sending him to Viet Nam, on the grounds of the alleged unconstitutionality and illegality of the conflict there, the Court of Appeals for the District of Columbia Circuit said recently:

> It is difficult to think of an area less suited for judicial action than that into which Appellant would have us intrude. The fundamental division of authority and power established by the Constitution precludes judges from overseeing the conduct of foreign policy or the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive. [Citing cases] *Luftig* v. *McNamara*, 373 F.2d 664 at 665-666 (D.C. Cir., 1967), *cert. denied, sub nom. Mora* v. *McNamara*, 389 U.S. 934 (1967).

II. *Defendant In The Present Case Has No Standing To Raise The "Legality" Of The Viet Nam Conflict.*

Defendant clearly has standing in the present criminal proceeding to challenge the constitutionality of that Act and of its administration, but the defendant does not have standing to raise questions relating solely to questions concerning the "legality" of the present conflict in Viet Nam and the political and diplomatic causes and consequences of that conflict.

If an American solider fighting in Viet Nam were given an illegal order, he would be directly affected thereby, and would perhaps have the requisite standing to raise the illegality of the order in defense to a prosecution for refusing to obey it. See *United States* v. *Bolton*, 192 F.2d 805 (2 Cir., 1951). But the defendant in the present case is far removed from such a position. See *Richter* v. *United States*, 181 F.2d 591 (9 Cir., 1950), *cert. denied* 340 U.S. 892 (1950).

A. The existence of an armed conflict and the "legality" of that conflict do not bear upon the criminality of interference with the Military Selective Service Act of 1967 and with its administration.

Matters concerning the Viet Nam conflict, which defendant seeks to inject into these proceedings, do not bear upon the question of his guilt or innocence of the crime with which he is charges. The Military Selective Service Act of 1967 and its predecessors have been in existence since 1940, and have been amended several times since then. They have been administered, and violations of their provisions have been prosecuted, in peacetime as well as during periods of armed conflict. The power of Congress to conscript manpower for general military service is "beyond question". *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968).

In *United States* v. *Mitchell*, 369 F.2d 323 (2 Cir., 1966), *cert. denied* 386 U.S. 972 (1967), the Second Circuit affirmed the conviction of a young man for wilful failure to report for induction into the armed forces. The defendant had attempted at trial to introduce evidence to show the Viet Nam conflict to be in violation of law. All such evidence had been excluded by the trial judge as immaterial. The Second Circuit Court of Appeals held (at page 324):

> . . . appellant's allegations are not a defense to a prosecution for failure to report for induction into the Armed Forces and his evidence was properly excluded. Regardless of the proof that appellant might present to demonstrate the correlation between the Selective Service and our nation's efforts in Viet Nam, as a matter of law the congressional power "to raise and support armies" and "to provide and maintain a navy" is a matter quite distinct from the use which the Executive makes of those who have been found qualified and who have been inducted into the Armed Forces. Whatever action the President may order, or the Congress sanction, cannot impair this constitutional power of the Congress.

In a similar case, the Second Circuit affirmed a conviction for wilful failure to report for civilian work (alternative service). *United States* v. *Hogans*, 369 F.2d 359 (2 Cir., 1966). The Court there held (at page 360):

> The Congressional power to provide for the draft does not depend upon the existence of a war or national emergency, but stems also from the Constitutional power to raise and support armies and to provide and maintain a navy. *United States* v. *Henderson*, 180 F.2d 711 (7th Cir., 1950). Accord, *Etcheverry* v. *United States*, 320 F.2d 873 (9th Cir.), cert. denied 375 U.S. 930 . . . (1963); *United States* v. *Bolton*, 192 F.2d 805 (2d Cir. 1951) (per curiam).
>
> The courts will not examine the purpose for which the executive employs the armed forces in foreign military operations. *United States* v. *Bolton*, *supra*.

B. Defendant cannot obtain standing to raise the "legality" of the Viet Nam conflict by attempting to show that he holds sincere philosophical, ethical or other beliefs concerning that conflict, based on "higher law".

The law is clear that a defendant's subjective notions of "higher law," no matter how motivated, cannot be the yardstick of criminal intent in the enforcement of Selective Service law.[2] *United States* v. *Madole*, 145 F. 2d 466 (2 Cir., 1944); *United States* v. *Henderson*, 180 F.2d 711 (7 Cir., 1950), *cert. denied* 339 U.S. 936 (1950); *United States* v. *Kime*, 188 F.2d 677 (7 Cir., 1951); *United States* v. *Spiro*, 384 F.2d 159 (3 Cir., 1967), *cert. denied* 390 U.S. 956 (1968).

In affirming convictions for refusal to register for the draft, the Seventh Circuit said in *Henderson*, *supra*, at 716:

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[2] The intent required by 50 U.S.C. App. 462(a) is the "usual criminal intent". *United States* v. *Hoffman*, 137 F.2d 416 at 419 (2 Cir., 1943); *Graves* v. *United States*, 252 F.2d 878 (9 Cir., 1958).

The final argument of the defendants is that none of the defendants had the criminal intent, which was necessary to a conviction. This argument scarcely deserves our consideration. Each of these defendants was a mature, young man, educated and intelligent. Each understood the law and what it required of him. Each deliberately decided not to meet its requirements, knowing that penalties were provided for non-compliance, and that such penalties might be meted out to him. As this Court said in *United States* v. *Mroz*, [136 F. 2d 221 (1943)] at page 226: "Appellant's clear and unqualified duty was to comply with his draft board's order. He can not 'take the law into his own hands' and render himself invulnerable to consequences. The draft machinery has been legally set up, and it is not for the individual to constitute himself judge of his own case." Each defendant here intended to, and did, deliberately violate the Act. That is sufficient to support his conviction.

PAUL F. MARKHAM
United States Attorney

By:

JOHN WALL
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

OPINION

November 25, 1968

WYZANSKI, Chief Judge

The grand jury indicted Sisson for willfully refusing to perform a duty required under the Military Selective Service Act of 1967, U.S.C. Tit. 50 App. §§ 451 et seq., in that he refused to comply with an order of his draft board to submit to induction into the armed forces of the United States.

He has moved to dismiss the indictment principally upon the ground that the draft act as applied to him violates the Constitution. He contends that there is under the Constitution of the United States no authority to conscript him to serve in a war not declared by Congress.

Intertwined are the issues as to whether Sisson has a standing to raise the question he poses and whether, indeed, it is authorized by the Constitution or contrary to its terms for him to be ordered to serve under the draft act at this time.

Two years ago those issues, while not squarely presented, were at least involved indirectly in the sentence I imposed upon Phillips, defendant in *United States* v. *Phillips*, Cr. 68-178-W. He claimed that the war in Vietnam was not duly authorized and that he could not be compelled to serve in it. In sentencing him I pointed out that he was unable to tell whether his service would involve any duties in Vietnam. So far as appeared, he might spend his total military service in the United States or in some foreign place other than Vietnam. I

implied, without definitely so ruling, that under the then existing circumstances he had no standing to question the military actions in Vietnam or to avoid induction on the ground that he might be involved in such actions.

Two major changes have occurred since the sentencing of Phillips.

First, it appears incontrovertibly that draft calls, that is, the number of persons summoned for military service under the Act, if not directly determined by military demands in Vietnam, are so closely correlated as to be unmistakably inter-dependent. Thus, the risk of being drafted, which each individual like Sisson sustains, is seriously magnified by the Vietnam war. This risk is different from the one which the individual taxpayer sustains by an increase in his taxes due to the swollen appropriations evoked by military demands in Vietnam. One reason is that the very person of the conscript is affected so that his whole life is altered. He is not merely inconvenienced by a fringe detriment to his pocketbook. What is perhaps even more significant is that *Selective Draft Law Cases*, 245 U.S. 368, decided in 1917 that a person drafted for military duty does have a standing to raise at least some issues with respect to the constitutionality of draft legislation. See particularly p. 389. Thus there is a difference from the dicta in *Flast* v. *Cohen*, 392 U.S. 83 which suggest that a person required to pay a federal income tax has no standing to challenge an act appropriating money to be spent in connection with Vietnam.

The other difference between the situation today and that two years ago is that previously it was plausible to suppose that one drafted under the Act could, subsequent to his induction and at the very point when he was in peril of being transferred to Vietnam, raise the issue as to whether he personally could constitutionally be required to serve in that war. In recent years, repeated opposition by the executive and military branches of the Government of the United States has led courts in a virtually unanimous series of opinions to conclude that a soldier cannot raise in a civilian court, or indeed in a military court, the issue as to the constitutionality

of his proposed transfer to Vietnam. Those cases may not represent the view which the Supreme Court of the United States will ultimately take. But it is indisputable that today there is no clear right of a soldier once he is in the armed forces to get a judicial ruling on the right of the Army to require him to serve in Vietnam. It follows that if there is to be a presently effective judicial review it must come at the point of induction and not later.

Faced with a defendant who has standing to raise the issue, this Court must inquire as to whether an order requiring service in the armed forces with a strong probability of ultimate service in Vietnam violates any provision of the United States Constitution so as to entitle the person so ordered to disregard the induction order. Put thus, the issue is somewhat deceptive. The court has a procedural, as well as a substantive, problem. It must decide whether the question sought to be raised is in that category of political questions which are not within a court's jurisdiction and, if the issue falls within the court's jurisdiction, whether as a matter of substance the defendant is right in his contention that the order is repugnant to the Constitution. Again, while those two aspects are technically separate, they are so close as often to overlap.

Four different types of cases may be noticed.

(1) A person may be required to give military service in connection with a war declared by Congress. *Selective Draft Law Cases, supra.*

(2) A person may be required to give military service in order to be ready to serve in a war that might later be declared by Congress. *Hamilton* v. *Regents*, 293 U.S. 245, 260; *United States* v. *O'Brien*, 391 U.S. 367, 377.

(3) There is no Supreme Court case deciding whether a person who has been conscripted in time of peace may be required during his service to respond to an order to fight abroad pursuant to a direction of the President, either as Chief Executive or as Commander-in-Chief, wholly unsupported by any Congressional authority but evoked by an emergency. It is important to note that

the third hypothetical case is not the present case. The third case, for which, as shown in the June 1968 Harvard Law Review *Note on Congress, The President, and The Power to Commit Forces to Combat*, 81 Harv. L. Rev. 1771, there are many Caribbean and other precedents, has as its central characteristic that the President has to act quickly and in an emergency assigns to battle in foreign areas men in the armed forces whether they are volunteers or conscriptees.

Without in any way deciding the point, it may be assumed that to meet the emergency the President need not wait for an Act of Congress and need not segregate those who were conscripted from others who volunteered. Indeed, one may further assume, for the sake of argument, that if the power rests upon emergency and the necessities thereby created, it is within the judicial power to scrutinize the length of time that the emergency may be permitted to serve as a constitutional rationalization for the action. See for possibly comparable cases Justice Holmes's opinion in *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543, his opinion in *Moyer* v. *Peabody*, 212 U.S. 78, and Chief Justice Hughes's opinion in *Sterling* v. *Constantin*, 287 U.S. 378.

Making such assumptions does not imply that the assumptions are correct. Caution is invited by *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2 (holding invalid Presidential emergency action, see particularly p. 103) and *The Steel Seizure* case, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, in President Truman's Administration (holding that executive action in an emergency even when closely connected with a foreign war was unconstitutional, perhaps partly because it seemed to circumvent a specific statute).

Moreover, as already observed, assumptions with respect to this third type of case are made merely for argument's sake, but do not purport to resolve authoritatively the highly debatable problem whether the issues as to whether emergency creates, or, as *Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U.S. 398, phrases it, furnishes the occasion for the exercise of power and if so, and whether the emergency may last indefinitely, raise the

sort of political questions not appropriate for judicial determination.

(4) The fourth case is the instant controversy before this Court. It presents the question whether a conscript can secure from a court a determination that a war carried on for a long time without a declaration of war but as a result of combined legislative and executive action is a war in which, against his will, he can be required to serve.

A central characteristic of this fourth case, that is the case at bar, is that there has been no declaration of war. But it is an equally central characteristic that in the military steps, including the drafting and assigning of soldiers, the President has not acted alone.

Congress in 1967 extended the Selective Service Act, Pub. L. No. 90-40, 81 Stat. 100. Congress acted with full knowledge that persons called for duty under the Act had been, and are likely to be, sent to Vietnam. Indeed, in 1965 Congress had amended the same Act with the hardly concealed object of punishing persons who tore up their draft cards out of protest at the Vietnam war. See *United States* v. *O'Brien*, 391 U.S. 367.

Moreover, Congress has again and again appropriated money for the draft act, for the Vietnam war, and for cognate activities. Congress has also enacted what is called the Tonkin Gulf Resolution, which some have viewed as advance authorization for the expansion of the Vietnam war.

What the court thus faces is a situation in which there has been joint action by the President and Congress, even if the joint action has not taken the form of a declaration of war.

The absence of the formal declaration of war is not to be regarded as a trivial omission. A declaration of war has more than ritualistic or symbolic significance. What something is called has much to do with how authorities act and also with how those subject to authority respond. There is a vast difference between money exacted as a penalty for a crime and money exacted as compensation for a civil wrong. Judges require stronger evidence, and a far greater degree of certainty before assigning the badge of shame involved in a fine than when

they enter a judgment of civil liability for compensatory damages. The procedural and substantive standards differ. There is a roughly similar distinction between a declaration of war and a Congressional appropriation to support military action overseas directed by the President.

But the fact that a declaration of war is a far more important act than an appropriation act or than an extension of a Selective Service Act does not go the whole way to show that in every situation of foreign military action, a declaration of war is a necessary prerequisite to conscription for that military engagement.

We are reminded by *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, and its progeny, that the national government has powers beyond those clearly stipulated in the Constitution. That the Constitution expresses one way of achieving a result does not inevitably carry a negative pregnant. Other ways may be employed by Congress as necessary and proper. Indeed, the implied powers may be not only Congressional but sometimes Presidential. *In re Debs*, 168 U.S. 564. And this implication may be most justifiable in foreign affairs. *U.S.* v. *Curtiss-Wright Corp.*, 299 U.S. 304. What may be involved in the present case is a choice between a limited undeclared war approved by the President and Congress and an unlimited declaration of war through an Act of Congress. The two choices may find support in different, related, but not inconsistent Constitutional powers.

If the national government does have two or more choices there are readily imagined reasons not to elect to exercise the expressly granted power to declare war.

A declaration of war expresses in the most formidable and unlimited terms a belligerent posture against an enemy. In Vietnam it is at least plausibly contended by some in authority that our troops are not engaged in fighting any enemy of the United States but are participating in the defense of what is said to be one country from the aggression of what is said to be another country. It is inappropriate for this court in any way to intimate whether South Vietnam and North Vietnam are separate countries, or whether there is a civil war, or whether there is a failure on the part of the people in

Vietnam and elsewhere to abide by agreements made in Geneva. It is sufficient to say that the present situation is one in which the State Department and the other branches of the executive treat our action in Vietnam as though it were different from an unlimited war against an enemy.

Moreover, in the Vietnam situation a declaration of war would produce consequences which no court can fully anticipate. A declaration of war affects treaties of the United States, obligations of the United States under international organizations, and many public and private arrangements. A determination not to declare war is more than an avoidance of a domestic constitutional procedure. It has international implications of vast dimensions. Indeed, it is said that since 1945 no country has declared war on any other country. Whether this is true or not, it shows that not only in the United States but generally, there is a reluctance to take a step which symbolically and practically entails multiple unforeseeable consequences.

From the foregoing this Court concludes that the distinction between a declaration of war and a cooperative action by the legislative and executive with respect to military activities in foreign countries is the very essence of what is meant by a political question. It involves just the sort of evidence, policy considerations, and constitutional principles which elude the normal processes of the judiciary and which are far more suitable for determination by coordinate branches of the government. It is not an act of abdication when a court says that political questions of this sort are not within its jurisdiction. It is a recognition that the tools with which a court can work, the data which it can fairly appraise, the conclusions which it can reach as a basis for entering judgments, have limits.

Because defendant Sisson seeks an adjudication of what is a political question, his motion to dismiss the indictment is denied.

Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

OPINION

November 26, 1968

WYZANSKI, Chief Judge

Defendant construes his motion to dismiss the indictment as including a contention that he is entitled to have the indictment dismissed on the ground that he is being ordered to fight in a genocidal war.

The issue of defendant's standing to raise the genocidal question and the issue whether the question is a question not within this Court's jurisdiction resemble the issues already considered by this Court in denying defendant's motion to dismiss the indictment on the ground that defendant has been ordered to fight in a conflict as to which Congress has not declared war. However, there are differences between the problems which the earlier motion presented and the ones now raised.

For argument's sake one may assume that a conscript has a standing to object to induction in a war declared contrary to a binding international obligation in the form of a treaty, in the form of membership in an international organization, or otherwise. One may even assume that a conscript may similarly object to being inducted to fight in a war the openly declared purpose of which is to wipe out a nation and drive its people into the sea. Conceivably, in the two situations just described, the conscript would have a standing to raise the issue and the court would be faced with a problem which was not purely a political question, but indeed fell within judicial competence.

The issue now tendered by this defendant is unlike either of the two cases just mentioned. At its strongest, the defendant's case is that a survey of the military operations in Vietnam would lead a disinterested tribunal to conclude that the laws of war have been violated and that, contrary to international obligations, express and implied, in treaty and in custom, the United States has resorted to barbaric methods of war, including genocide.

If the situation were as defendant contends, the facts would surely be difficult to ascertain so long as the conflict continues, so long as the United States government has reasons not to disclose all its military operations, and so long as a court was primarily dependent upon compliance by American military and civilian officials with its judicial orders. It should be remembered that the tribunal at Nuremberg, probably because it had a Russian judge, was unable to face up to the problems tendered by the Katyn massacres. Moreover, neither at Nuremberg nor at Tokyo, tribunals upon which an American judge sat, was there any attempt to resolve the problems raised by the nuclear bombing of Hiroshima and Nagasaki. It is inherent in a tribunal composed partly of judges drawn from the alleged offending nation that a wholly disinterested judgment is most unlikely to be achieved. With effort, self-discipline, and judicial training, men may transcend their personal bias, but few there are who in international disputes of magnitude are capable of entirely disregarding their political allegiance and acting solely with respect to legal considerations and ethical imperatives. If during hostilities a trustworthy, credible international judgment is to be rendered with respect to alleged national misconduct in war, representatives of the supposed offender must not sit in judgment upon the nation. An analogous path of reasoning must lead one to conclude that a domestic tribunal is entirely unfit to adjudicate the question whether there has been a violation of international law during a war by the very nation which created, manned, and compensated the tribunal seized of the case.

Because a domestic tribunal is incapable of eliciting the facts during a war, and because it is probably in-

capable of exercising a disinterested judgment which would command the confidence of sound judicial opinion, this Court holds that the defendant has tendered an issue which involves a so-called political question not within the jurisdiction of this Court. Cf. *U.S.* v. *Mitchell*, 369 F.2d 323, (2d Cir.).

The motion to dismiss the indictment is again denied.

Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

ORDER

December 3, 1968

WYZANSKI, Chief Judge

This formal and binding order is a response to defendant's counsel's informal letter, dated November 27, 1968.

1. The Court declines to modify its opinion of November 26. As is plain from the opinion as a whole, the word "genocide" as used therein has not primarily a narrow technical significance but relates to the method of eliminating a population by "barbaric methods." Defendant's earlier brief invited a broad opinion covering the many supposed methods asserted to have been used by the United States in conducting the Vietnam war.

2. Defendant indicates that he "proposes to offer evidence bearing on whether Congress indeed has authorized the Vietnam war." Such a proffer is by this Order formally rejected, subject, *as is every provision of this Order*, to defendant's automatically saved exceptions. First, the offer is precluded by this Court's opinion of November 25. Second, the matter of Congressional action or inaction is not a fit subject of "evidence"; it is, like a statute or rule or the absence of such, a subject to which the attention of a judge is properly drawn by brief or argument, rather than by testimony to be submitted to the trier of fact.

3. Defendant states he intends to "introduce evidence showing that the Vietnam war violates binding international obligations in the form of a treaty, membership

in an international organization, or otherwise." Before announcing its ruling, this Court distinguishes two types of alleged violation. (1) An international treaty might forbid a particular type of domestic statute or rule. For example, a treaty between the United States and a foreign power might forbid the United States to collect tolls for the use of a certain canal. If in the face of the treaty, Congress enacted a statute exacting tolls from a shipowner using that canal, and a collector proceeded to collect such tolls from an unwilling shipowner, he could sue to recover the amount from the collector, and the Court would entertain jurisdiction, within its authorized limits, to hear the case and to determine if the collection were contrary to the treaty. But, it should be noted that the Court, consistently with what is stated in Paragraph 2 of this Order, would receive with respect to that issue briefs or like arguments referring to the statutes and rules and (except in a case where facts were determinative, as, for example, whether the ship entered the canal before the treaty became effective) would not permit evidence with respect to the supposed conflict to be submitted to the trier of fact. (2) An international treaty might forbid the United States to engage in "the use of force". If it is claimed that the United States is subject to such a treaty, or to any international obligation, which applies to activity in Vietnam and if it is further claimed that the United States is now engaged in the use of force in Vietnam, the issues sought to be posed are political questions. The reasons for that statement are at least implicit in this Court's opinion of November 26. That is, "a domestic tribunal is incapable of eliciting the facts during a war and . . . it is probably incapable of exercising a disinterested judgment." The question whether there is a "use of force" presents problems of definition and, more significantly, of application to complicated facts, many of which are hidden in the recesses of chancelleries and governmental bureaus of both the United States and foreign countries. Nothing short of an inquiry of a scale loosely comparable to the Nuremberg Trial could fairly uncover the dominant facts. The primary witnesses appropriate for such an investigation

would be not academic persons who have no first-hand observations, but would be participants, authors of and parties to diplomatic and other official documents and correspondence, and officials who had responsibility for action or non-action. At best, the academic experts would be appropriate (not as evidence but as sources of argumentative material) after such primary testimony had been offered. Nothing in defendant's counsel's letter of November 27, 1968 indicates that his tender of evidence would raise an issue of the first type—that is, roughly similar to the example of the canal tolls. Hence this Court rules that it has not received a sufficiently specific suggestion of a question of international law claimed to fall within its jurisdiction, and that what have been proposed are issues raising political questions not within its jurisdiction. This ruling applies to the points listed on pages 9 and 10 of defendant's first Memorandum of Points and Authorities.

4. Defendant states it "will offer evidence to show he reasonably believed the Vietnam war to be illegal." The indictment charges him with wilfully refusing to perform a duty under the Military Selective Service Act of 1967. U.S.C. Ti. 50 App. §§ 451 et seq. "Wilfully" as used in the indictment means intentionally, deliberately, voluntarily. If the Government proves defendant intentionally refused to comply with an order of his draft board, in accordance with the statute, to submit to induction, it is not open to defendant to offer as an excuse that he regarded the war as illegal, that is, contrary to either domestic Constitutional law or international law. Whatever may be the availability of the issues of political belief, good faith, and like innocent motivation as defenses to an indictment charging conspiracy, and whatever may be the requirement imposed upon a prosecution in a conspiracy trial to show bad faith or awareness of illegality, and whatever may be in a conspiracy trial the relevance of a contention that the defendants therein were exercising their political rights of free speech which, by virtue of the First Amendment to the Constitution, are not subject to laws made by Congress,—in a prosecution for wilfully refusing to obey an induction order,

evidence with respect to belief is admissible only to the extent it bears upon the issues of intent, as distinguished from motive or good faith.

5. Defendant states he will "offer evidence to show that he properly refused to be inducted on the basis of his right of conscience, both statutory and constitutional." That proffer may (or may not) mean that defendant is prepared to prove that he has a religious conscientious objection to the Vietnam war, although he has no such objection to every war. If that is his position, he is entitled to offer at least initially only before the judge (in the absence of the jury) such evidence in order to elicit a ruling whether his evidence tends to support his allegation of fact and then to elicit a ruling whether the First Amendment precludes the Congress from requiring one who has religious conscientious objections to the Vietnam war to respond to the induction order he received. If the Court rules favorably to defendant on the Constitutional issue of law, then both defense and prosecution are entitled to submit to the trier of fact evidence relevant to the question whether defendant indeed is a religious conscientious objector to the Vietnam war.

6. Defendant states he will "offer evidence to show that the Selective Service Act of 1967, and the regulations governing the administration thereof, violate the constitutional requirements of due process." The vagueness of this quotation is an obstacle to a definite ruling. If the meaning is that the text of a section of the statute or of a regulation which has been applied to defendant as one of the steps in connection with the order directing him to submit to induction is in violation of the Fifth Amendment, the appropriate way to present the challenge is by making, (either before or at the trial, when the statute or regulation is relied upon either by the prosecution or the defense,) an argument addressed to the judge, not to the trier of fact. If the meaning is that defendant alleges that, as a matter of fact, because of some step in the process of adopting a regulation, or because of some act or omission in applying a statute or regulation, the statute or regulation was applied to him in violation of the Fifth Amendment, then a pre-

liminary disclosure must be made to the judge for his ruling as to the admissibility of the factual evidence and, if the ruling is favorable to defendant, evidence on the point, whether offered by prosecution or defense, may under some circumstances be submitted to the trier of fact.

/s/ Charles E. Wyzanski, Jr.
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

OPINION

December 11, 1968

WYZANSKI, Chief Judge

In his memorandum of points and authorities at pages 9 and 10, defendant lists the following as being matters as to which he proposes to tender evidence:

> "1. 'The United States claim to be acting in "collective self-defense" on behalf of South Vietnam is contrary to the well-established meaning of the rule laid down in Article 51 of the United Nations Charter to define the situations in which the right of collective self-defense may be lawfully exercised.
>
> 2. The United States military intervention in Vietnam therefore also violates the fundamental prohibition of the use of force proclaimed in Article 2(4) of the Charter as a Principle of the United Nations.
>
> 3. The United States has refused for more than a decade to abide by the basic Charter obligation contained in Article 33(1) to seek the settlement of international disputes by peaceful means.
>
> 4. The United States has refused to make proper use of the elaborate machinery created by the Geneva Accords of 1954 for the purpose of preventing any improper developments in Vietnam. The United States, furthermore, abetted and supported the systematic disregard of these obligations by the Saigon regime.

5. The State Department contends that an armed attack by North Vietnam upon South Vietnam occurred before February 7, 1965, the date on which the United States started overt war actions. This contention itself implies that the use of force by the United States in Vietnam during the four-year period between 1961 and early 1965 was illegal. The State Department agrees with the position of this analysis that armed attack must have taken place to justify the use of force by the United States under the principle of 'collective self-defense.'

6. In February 1965, when the United States started war actions against North Vietnam, the United States formally declared that these war actions constituted reprisals. Under the rules of international law governing the right of reprisal, these war actions must be regarded as illegal reprisals.

7. The United States abetted the breach of the central provision of the Geneva Accords of 1954 by South Vietnam, namely, the obligation to hold nationwide elections under international supervision looking toward the reunification of the Southern and Northern zones of Vietnam under a single government.

8. The United States also contravened other basic provisions of the Geneva Accords of 1954 by fostering a foreign military build-up in Vietnam and by virtually bringing South Vietnam into a military alliance.

9. The presence of large United States military forces in South Vietnam and the introduction of military equipment into South Vietnam has violated those provisions of the Geneva Accords which prohibit any foreign military build-up in South Vietnam. This conclusion has been confirmed by findings of the ICC.

10. The war actions of the United States in South Vietnam are not authorized by the SEATO Treaty but, in fact, appear to be in violation of it.

11. Even if the United States were legally entitled to take war actions in Vietnam, its methods of war-

fare would still be illegal insofar as they have violated the rules and customs of warfare.' "

Defendant indicates that to support his contention he will offer the evidence of two academic persons of undoubted distinction: Richard A. Falk, Milbank Professor of International Law, Princeton University, and Stanley Hoffman, Professor of Government and International Law, Harvard University.

One of the important questions which this Court must consider is whether such undoubtedly expert persons are suitable as witnesses called to the stand to give testimony before a jury or other trier of fact.

Much misunderstanding of the theoretical basis of expert witnesses has followed from undoubted differences in practice in different courts.

1. Expert opinion may properly be cited by either trial or by appellate courts to support the reasonableness of an act passed by a legislature if that act is challenged under the due process or other clause of the Constitution. Mr. Brandeis, as he then was, in *Muller* v. *Oregon*, 208 U.S. 412, if he did not originate the use of expert opinion to support the reasonableness of a legislative act, at least deserves credit for making the practice respectable. But two points are to be noted. First, expert evidence of the Brandeis brief type is offered not from the witness stand, but from the counsel table as written argument. Second, the expert evidence is used to support the reasonableness of the legislation and is not used either to contradict it or to achieve a quite independent non-legislative judgment of fact. See Wyzanski, "A Trial Judge's Freedom and Responsibility", 65 Harv. L. Rev. 1281, 1295-1296.

2. Appellate and trial courts have on occasion utilized expert opinion not in support of a legislative judgment but to invalidate a legislative judgment on the ground that it was unreasonable. This was conspicuously true with respect to *Brown* v. *Board of Education*, 347 U.S. 483, in which expert opinion was used in the Supreme Court of the United States to invalidate local ordinances segregating school children according to race. This was a heterodox step because some of the authorities relied

upon by the Supreme Court of the United States were, so far as appears, persons whose expert testimony was not given at the trial stage to the judge or to the jury and, to a large extent, was not included within the materials formally submitted as briefs by the opposing parties. Note, *Social and Economic Facts—Appraisal of Suggested Techniques for Presenting Them to the Courts*, 61 Harv.L.Rev. 692, 697, note 43. Wyzanski, *supra*, p. 1296. Whether a different method justifies the use of expert opinion to invalidate a statute presents problems not now considered.

3. A trial court may properly accept expert testimony with respect to certain types of primary facts which have already been admitted in evidence as testimony by witnesses who themselves made relevant observations of primary facts. The applicable general rules are admirably restated in the A.L.I. *Model Code of Evidence*, ch. V, §§ 401-410, which reflects an independent re-examination of *2 Law and Contemporary Problems* 401-527, 2 Wigmore, *Evidence* (3d ed. 1940) § 563, and a Uniform Act proposed in 1937 by the National Conference of Commissioners on Uniform State Laws. A common case in the trial courts is where a doctor is called to testify as to his expert medical opinion as to whether the primary facts already in evidence support an inference of causation or support a particular diagnosis or prognosis. Perhaps the most extreme example of expert medical testimony so far sanctioned was the ruling by Judge Goddard in the second trial of *United States* v. *Hiss*, 88 F. Supp. 559 (S.D.N.Y.) permitting Dr. Binger and Dr. Murray to express a psychiatric opinion of the credibility of the witness Whittaker Chambers. A more familiar use of expert opinion is where an expert real estate appraiser testifies in a valuation case as to his opinion of the value of property, the characteristics of which have been independently proved either by his or other persons' observations.

4. A closer case which commonly arises in the trial court involves the testimony of an expert in patent cases. Probably because most judges find the subject of patents difficult to understand, and because the question of in-

vention is a mixed question of fact and of law, it is usual for the parties in a patent infringement litigation to offer expert testimony which goes beyond a description of what has been observed and which tends in most instances to involve an opinion on such questions as the amount of advance over the prior art. Such questions involve not merely observations and factual inferences, but mixed factual and legal conclusions or steps in the process of such conclusions.

5. A variety of the preceding situation with respect to patents is the use by a trial judge of a court-appointed expert who undertakes, almost like a master, to review the whole of the evidence offered or to be offered by the plaintiff and the defendant and to express as a witness on the stand his opinion, subject to cross-examination, as to whether the patent is valid and whether it has been infringed. See A.L.I. *Model Code of Evidence*, §§ 405-407. My own experience in the unreported case of *McMillan Laboratory, Incorporated* v. *Emerson and Cuming, Inc.*, (D. Mass.), C.A. 58-617-W, is recited in Wyzanski, "The Law of Change", *New Mexico Quarterly*, Spring 1968, pp. 19-20.

6. With respect to copyright cases, proper practice permits a party to put on the witness stand, before the jury or other trier of fact, an expert to aid the trier of facts to analyze supposed similarities between the copyrighted work and the alleged infringing work. *Arnstein* v. *Porter*, 154 F.2d 464, 484 (2d Cir.). But it is improper to permit the expert to testify as to illicit copying or unlawful appropriation. *Ibid.* Even where it is proper to allow expert testimony on supposed similarities, the matter may be so obvious, to the trier of facts, either as to similarities or dissimilarities, (the usual situation with regard to literature though often not as to music,) that sound policy leads a judge, as a matter of discretion, to reject expert testimony and to permit the expert opinion to appear only as part of and as a source of counsel's argument. *Nichols* v. *Universal Pictures Corporation*, 45 F.2d 119, 122 (2d Cir.); *Burns* v. *Twentieth Century-Fox Corporation*, 75 F. Supp. 986 (D. Mass.). Judge Learned Hand, perhaps the wisest and most experienced

of copyright judges, said in the *Nichols* case at p. 122, where there had been protracted use of expert testimony,

> "We cannot approve the length of the record, which was due chiefly to the use of expert witnesses. Argument is argument whether in the box or at the bar, and its proper place is the last. The testimony of an expert upon such issues, especially his cross-examination, greatly extends the trial and contributes nothing which cannot be better heard after the evidence is all submitted. It ought not to be allowed at all; and while its admission is not a ground for reversal, it cumbers the case and tends to confusion, for the more the court is led into the intricacies of dramatic craftsmanship, the less likely it is to stand upon the firmer, if more naive, ground of its considered impressions upon its own perusal. We hope that in this class of cases such evidence may in the future be entirely excluded, and the case confined to the actual issues; that is, whether the copyrighted work was original, and whether the defendant copied it, so far as the supposed infringement is identical."

7. In the instant case, defendant seeks to argue before a jury what is essentially a question of law, that is, whether the actions of the United States executive and military authorities are a breach of international obligations undertaken by the United States in the form of treaties, or memberships in international organizations, or other arrangements having the force of international law. It would be entirely too clear for argument that this is entirely improper (see Thayer, *A Preliminary Treatise on Evidence*, p. 202; *Commonwealth* v. *Sullivan*, 146 Mass. 142; for a comment on *Sullivan* see Mark DeWolfe Howe *Justice Oliver Wendell Holmes*, Vol. II, p. 200) were it not for a suggestion which has recently gained currency (see Joseph L. Sax, *Conscience and Anarchy: The Prosecution of War Resisters*, The Yale Review, Vol. LVII, June 1968, No. 4, p. 481) that in criminal law cases of a certain type, particularly those which raise issues of constitutional liberty, the defendant has the right to address not merely the judge, but also the

jury in order to get the jury's view of constitutional law. The contention is, in effect, that just as in libel law as a result of Fox's Libel Act, juries were permitted to acquit a defendant if they believed that as applied to him the law was unfair, or if they did not like the view of the law given by the judge in his charge to the jury, so in constitutional cases involving civil liberty a jury should have a right on their unfettered view of the law to acquit the defendant. Up to now it has not been thought that today in the United States Courts it is appropriate for a jury, even in a constitutional case, to have any concern with the law, except to apply it as instructed by the judge. *Sparf and Hansen* v. *United States*, 156 U.S. 51. The history of the topic is brilliantly surveyed by Mark DeWolfe Howe in *Juries As Judges Of Criminal Law*, 52 Harv. L. Rev. 582. Of course, we all know that in certain cases where political issues run high, juries in the privacy of the jury room vote their political convictions and disregard a judge's instructions. As Judge Learned Hand said in *United States* v. *Adams*, 126 F.2d 774, 775-776 (2d Cir.),

> ". . . The institution of trial by jury—especially in criminal cases—has its hold upon public favor chiefly for two reasons. The individual can forfeit his liberty—to say nothing of his life—only at the hands of those who, unlike any official, are in no wise accountable, directly or indirectly, for what they do, and who at once separate and melt anonymously in the community from which they came. Moreover, since if they acquit their verdict is final, no one is likely to suffer of whose conduct they do not morally disapprove; and this introduces a slack into the enforcement of law, tempering its rigor by the mollifying influence of current ethical conventions. A trial by any jury, however small, preserves both these fundamental elements and a trial by a judge preserves neither, at least to anything like the same degree."

In this case defendant is seeking, by tendering Professors Falk and Hoffman as witnesses, to broaden the

defenses available in a trial which has constitutional implications. He seeks precisely the same latitude that in the 18th Century Erskine and Fox did in libel law. But if any such latitudinarian position is to be taken, it surely first should be sanctioned by the Supreme Court of the United States and not introduced into the law by a district judge.

/s/ Charles E. Wyzanski, Jr.
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

MOTION FOR AMENDMENT TO INCLUDE STATEMENT PRESCRIBED BY 28 U.S.C. § 1292 (b) IN CERTAIN OPINIONS AND AN ORDER DENYING DEFENDANT'S MOTION TO DISMISS

In accordance with the provisions of rule 5(a) of the Federal Rules of Appellate Procedure, defendant herein moves that the Court amend its opinion dated November 25, 1968, its opinion dated November 26, 1968, paragraph 3 of its order dated December 3, 1968, and its opinion dated December 11, 1968, to include a statement that the issues there determined by the Court involve controlling questions of law as to which there is substantial ground for difference of opinion, and that an immediate appeal with respect to said issues may materially advance the ultimate termination of this proceeding.

Respectfully submitted

/s/ John G. S. Flym
JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

DEFENDANT'S MOTION CONCERNING VOIR DIRE

Pursuant to Rule 23(a) of the Federal Rules of Criminal Procedure, defendant moves this Court to permit counsel to interrogate the prospective jurors concerning the following matters and other related matters, or in the alternative, to examine the jury panel as follows:

1. Do you or any member of your family know the attorney for the United States in this case, _____?
2. Do you or any member of your family know any of the following persons who worked on the investigation of this case? (The defendant asks that the government list the FBI agents and others who worked on the investigation.)
3. Do you or any member of your family know the following persons who are prospective witnesses in this case? (Defendant requests the court to ask the government to list the names of the witnesses whom it intends to call for the purposes of examining the jurors to see if any of them or any members of their family know the witnesses.)
4. Do you or any member of your family know any employee of the Federal Bureau of Investigation?
5. Do you or any member of your family know anybody who works for the United States Department of Justice, or as a prosecutor?
6. Have you heard or read anything about this case, in which the defendant is charged with refusal to submit to induction into the military services? If so, how did you gain this knowledge? Through newspapers and maga-

zines? radio? television? discussion with family, friends or acquaintances?

7. Have you ever heard anyone else express an opinion about the defendant, John Heffron Sisson, Jr., or about this case?

8. Have you ever in any place or at any time expressed an opinion about the defendant or about this case?

9. If you sit on the jury in this case, under your oath as juror, you will be required to focus your attention exclusively on the charges brought in the indictment here and the evidence offered by the prosecution and the defense and received in this courtroom. Do any of you feel that you will be unable to judge the facts of this case solely upon the basis of the evidence presented here in this courtroom and in accordance with the instructions of the law given by the court?

10. Do you, or does any member of your family, know anybody who is or has been a member of the military? Have any of you been in service? (If yes, give details: rank, theater of service.)

11. Have you ever served on a criminal jury? If so, how many times?

12. Have you ever been a witness for the government before a grand jury, or in the trial of a criminal case?

13. Would any of you place greater credence, or give greater weight, to the testimony of government agents or employees as contrasted with the testimony of persons not employed by the government?

14. Specifically, would you place greater credence in, or give greater weight to, testimony of members of the Federal Bureau of Investigation, or the Metropolitan Police, or the military, than to the testimony of persons not so employed?

15. Are you an employee of the United States government? If so, would you feel in any manner embarrassed in your employment or with your superiors if you were to return a verdict for the defendant, considering that the government is a party to this action?

16. Are you a member of or affiliated in any way with any law enforcement agency?

17. Is any member of your family employed by or affiliated with a law enforcement agency?

18. Are any of you convinced that no reasonable man could hold the view that the Vietnam War is wrong, or illegal, or unjustified, or immoral?

19. Are any of you convinced that a man who refuses induction into the military services necessarily must have a bad purpose or an evil intent?

20. There has been a great deal of publicity lately about the draft laws, and about criminal prosecutions of persons who are supposed to have violated the draft laws. Have you read anything about any of these cases? Have you expressed any opinion about any draft law cases? If so, what were the circumstances?

21. Is your state of mind such that you are opposed to or find fault with the following basic principles of our law:

a) The indictment is merely a charge. It is proof of nothing and no unfavorable inference may be drawn against a person because he is charged with a crime.

b) Anyone accused of crime is presumed innocent, which presumption continues even while the jury deliberates and entitles a defendant to be acquitted unless the jury finds that his guilt has been established beyond a reasonable doubt.

c) The burden is at all times upon the prosecution. Defendant has no burden of offering proof or of testifying in his own defense, and, even if he does not, no unfavorable inference may be drawn against him.

d) A defendant must be acquitted unless his guilt is established beyond a reasonable doubt by reliable, believable proof and not upon suspicion, guess or conjecture.

e) If your state of mind is such that you are opposed to any one or more of the basic principles of law (Nos. a-d), can you completely put aside and remove your own concept of the law and accept the court's instructions on the law in its entirety unbiased and unaffected by your previous concepts?

Respectfully submitted,

/s/ John G. S. Flym
JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Cr. No. 68-237-W WYZANSKI, C. J.

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

APPEARANCES:

Stanislaw A. Suchecki, Esq., Assistant United States Attorney, attorney for the government.

John G. S. Flym, Esq., attorney for the defendant.

Court Room No. 6,
Federal Building,
Boston, Mass.

March 21, 1969.

[fol. 2] The COURT. The Court will follow its normal practice, which it has followed for over 25 years, of doing the questioning of the jurors, in accordance with Chief Justice Taft's procedure. This is not an occasion for talk of any kind by any spectator. If there is any talk by any spectator, he will be told to leave the room and he may even be dealt with summarily in accordance with the authority of the court.

Please call the jury in connection with United States against Sisson. Will you call the defendant to the bar?

The CLERK. Criminal No. 68-237-W, United States of America against John Heffron Sisson, Jr.

The COURT. Is he here?

Mr. FLYM. Yes, your Honor, he is here.

The COURT. Please go to the usual place. You are a defendant; you are not a lawyer.

The DEFENDANT. Excuse me, I didn't know.

The CLERK. John Heffron Sisson, Jr., you are now set to the bar to be tried, and the good people whom I will call will pass between you and the United States of

America. If you object to any of them, please do so as they are called and before they are sworn.

The COURT: All right.

[fol. 3] The CLERK. 43, Justin McCarthy. No. 9, John T. Burns. No. 28, Clare G. Green. No. 37, Merle A. Lamont. No. 66, Robert Weiser. No. 1, Esther Alman. No. 6, Margaret Brooks.

The COURT. Margaret Brooks.

[No response.]

The COURT. Call another name.

The CLERK. No. 35, Mary Kelley. No. 68, Everett Williams, Jr. No. 15, Elaine Cribben. No. 3, Helen Barker.

The COURT. Will those persons who are in the jury box and all others called for jury duty please listen attentively. This is the trial of an indictment, United States of America against John Heffron Sisson, Jr. An indictment is a mere complaint or charge. It is in no sense evidence. It has been presented by a Grand Jury which never heard defendant's counsel and probably did not hear defendant or any of defendant's witnesses. It is a mere pleading.

The Grand Jury charges that on or about April 17, 1968, at Boston, in the District of Massachusetts, John Heffron Sisson, Jr. of Lincoln, in the District of Massachusetts, did unlawfully, knowingly and willfully fail and neglect and refuse to perform a duty required of him [fol. 4] under and in the execution of the Military Selective Service Act of 1967, and the rules, regulations and directions duly made pursuant thereto, particularly 32 Code of Federal Regulations, 1632.14, in that he did fail and neglect and refused to comply with an order of his local draft board to submit to induction into the armed services of the United States, in violation of Title 50 Appendix, United States Code, Section 462.

If any of you know John Heffron Sisson, Jr. or his counsel, John G. S. Flym, or know the United States Attorney, Mr. Markham, or his assistant, Mr. Suchecki, or his assistant, Mrs. Brennan, or know anyone else in the Department of Justice, including the FBI, or know any-

body on the Lincoln draft board, please hold up your hand.

If you know anything about this case, having seen anything in a newspaper about it, or have heard anything of it over the radio or on T.V or in any way hold up your hand.

If you know of any reason why you, because of your own or any member of your family's interest in Selective Service matters, might have a bias with respect to this case, either for or against the defendant or the Government, hold up your hand.

[fol. 5] If you have at any time expressed any opinion with respect to the Constitutionality, legality or similar considerations with respect to service in the draft, in Vietnam, or otherwise, hold up your hand.

If you feel that there is any mental or other condition, any attitude of mind or otherwise, which would make you incapable of rendering a verdict according to the law and the evidence in this case, please hold up your hand.

Is there anything else, gentlemen?

Mr. FLYM. May I approach the bench, your Honor?

The COURT. Yes.

[Conference at the bench between Court and counsel as follows:

Mr. FLYM. I believe in reference to the first question Juror 2 had some doubt.

The COURT. Juror No. 2, did you express an opinion?

JUROR BURNS. I wasn't sure I understood. I know a United States Marshal.

The COURT. Do you know the present United States Marshal?

JUROR BURNS. Yes, sir.

The COURT. What is his name?

JUROR BURNS. Billy Baldwin.

[fol. 6] The COURT. He is not the United States Marshal.

JUROR BURNS. He is a Marshal though.

The COURT. Well, he is an assistant.

Is that any ground for you to challenge?

Mr. FLYM. No, your Honor. I didn't know.

[End of conference at the bench.]

[fol. 7] The COURT. All other persons called for jury duty are excused until Monday at ten o'clock. You are excused.

I will name a Foreman now. Mr. Weiser, will you act as Foreman of this jury. Please change places with No. 1.

Will you swear the Foreman and then swear the others? As far as I am concerned, the spectators may move to the most comfortable position they can find in the courtroom.

The CLERK. Mr. Foreman, please raise your right hand. Do you solemnly swear that you will well and truly try the issue between the United States and the defendant at the bar according to the law and the evidence given you, so help you God?

The FOREMAN. I do.

The CLERK. Will the balance of the panel please stand up? Please raise your right hand. Do you severally solemnly swear that you will well and truly try the issue between the United States and the defendant at the bar according to the law and the evidence given you, so help you God?

[The jury replied: I do.]

The COURT. You may proceed.

Mr. SUCHECKI. Thank you, your Honor. May it [fol. 8] please the Court, Mr. Foreman and members of the jury. As you have heard, this is the case of United States v. John Heffron Sisson, Jr. of Lincoln, Massachusetts, who is charged in a one Count indictment, that on or about April 17, 1968, at Boston, in the District of Massachusetts, he did unlawfully, knowingly and willfully fail and neglect and refuse to perform a duty required of him under and in the execution of the Military Selective Service Act of 1967 and the rules, regulations and directions duly made pursuant thereto, in that he did fail and neglect and refuse to comply with an order of his local draft board to submit to induction in the armed forces of the United States of America.

Now what will be the Government's proof in this case? The Government will prove that John Heffron Sisson, Jr. was subject to the provisions of the Selective Service Act, that is, he was in the age bracket between 18 and 26. Actually, John Heffron Sisson, Jr. was 18 years old and a student at Harvard College when he registered with the draft board.

The Government will prove that the defendant had been classified 1-A in accordance with the requirements of law. You will be able to find on the evidence submitted to you that the defendant was subject to the law-
[fol. 9] ful and valid orders of his local draft board. You will be able to find that the defendant had been found acceptable for induction into the armed forces of the United States after a physical examination and a mental examination.

You will be able to find that the defendant failed, neglected and refused to perform a duty required of him in that he failed, neglected and refused to comply with an order made by his local board to submit to induction into the armed forces.

You will be able to find that this order was made with his knowledge, that is, he knew that order had been given to him, and he knew that he was not complying with it. This was not something that happened without his knowing about it.

You will be able to find that the defendant in failing to submit to induction did this under circumstances where he could exercise his free will and free choice. You will be able to find in effect that he intentionally and purposefully did not submit to induction. That is, not that he did not have a choice about the matter, but that he freely chose not to submit to induction, intentionally and purposefully.

Further, you will be able to find that he did this un-
[fol. 10] lawfully. That is, without justification or excuse in the law for taking the action he freely chose to take.

Now what are the facts the Government submits will prove beyond a reasonable doubt that John Heffron Sisson, Jr. failed and neglected and refused to submit to

induction knowingly, willfully and unlawfully of an order to do so by a valid and lawful order of his local board?

The evidence will show that shortly after the defendant registered he was sent a classification questionnaire, which he completed and returned to his local board. The evidence will show that he received a student certificate from Harvard College and was classified 2-S by his local board on October 6, 1964, and for approximately three years after the defendant was classified 2-S.

The evidence will further show that on or about November 20, 1967 he was classified 1-A. The date is November 20, 1967. The evidence will show that when he was reclassified 1-A he was sent what is known as a Notice of Classification, a Form 110, containing all of his rights of appeal.

With that Notice of Classification, the evidence will [fol. 11] show that he was sent another form, Form 217, which was a letter in effect repeating what was already in the Notice of Classification, and this indicated all his rights to personal appearance and appeal.

In other words, the defendant had at least 30 days in which he could come in personally to his local draft board and appeal his classification to 1-A, and if he was still dissatisfied with the classification that was given him by his local board he had a right to appeal that classification, according to the regulations, under certain circumstances all the way to the President of the United States.

The evidence will show that this form was mailed to him on or about November 21, 1967. The mail that was sent to him was never returned to the local board as undelivered or undeliverable.

The evidence will further show that there was no appeal made by anyone within that 30-day period or any period.

The evidence will further show that on or about December 19, 1967 the local board mailed to the registrant his Order to Report for the armed forces physical examination on about January 12th of 1968.

The evidence will show also that the defendant ac- [fol. 12] knowledged the receipt of this Order to Report for the armed forces physical examination which was to

be held in Boston and stated he was leaving for Montgomery, Alabama, and he expected to be assigned to work in Mississippi.

The evidence will further show that in due course Mr. Sisson's papers were mailed to Local Board 27 in Jackson, Mississippi, and he was eventually examined physically and mentally, and he was found acceptable for induction into the armed forces.

The evidence will further show that on or about February 23, 1968 the examination papers were received by Local Board 114 and the board notified Mr. Sisson that he was found physically and mentally fully acceptable for induction into the armed forces.

On February 29, 1968 the defendant notified the local board he was conscientiously opposed to service in the armed forces. The evidence will further show that in due course the local board mailed the defendant a special form, which is to be filled out by a conscientious objector. This form, Form 150, the evidence will show, was never returned to the local board as undelivered or undeliverable, nor was it ever returned filled out by the registrant.

[fol. 13] On March 18, 1968 the defendant was ordered to submit to induction into the armed forces of the United States on April 17, 1968. The evidence will show that the defendant at the armed forces entrance and examining station, at the Boston Army Base, that day, April 17, 1968, refused to take the traditional step forward indicating his submission to induction.

After the Government has presented all of its evidence and you have had a chance to listen to all of the case, we respectfully submit you will be able to find that the Government has proved each and every essential allegation in the indictment and you will be able to find the defendant guilty as charged beyond a reasonable doubt.

The COURT. You may call your first witness. Did you want to say something?

Mr. FLYM. It was my understanding, your Honor, that the custom is for the defendant also to make an opening.

The COURT. It is not the custom. Never in my court in 27 years has it been done.

Mr. SUCHECKI. I would like to call to the stand Col. Feeney, please.

[fol. 14]

PAUL FRANCIS FEENEY, Sworn

Direct Examination

Q [By Mr. Suchecki] Would you please tell us your name, your rank and occupation, sir.

A Paul Francis Feeney, Colonel, Army of the United States, and I am the Deputy Director, Selective Service, for the Commonwealth of Massachusetts.

Q How long, sir, have you been assigned to the Selective Service System?

A For 19 years.

Q Did you, sir, bring some records at my request?

A Yes, sir.

Q And what records are those, sir?

A The Selective Service records of John Heffron Sisson, Jr.

Q Are these Government records, sir?

A Yes, sir.

Q Are these records kept in the regular course of business?

A Yes, sir.

Q Was it the regular course of business to keep such records?

A Yes, sir.

Q Were the entries made in these records at or about [fol. 15] the time indicated in them?

A Yes, sir.

Q And do you have custody and control of this file, sir?

A Yes, sir, I do.

Q Now, sir, would you please tell the members of the jury what first occurs in the Selective Service Process?

A Within five days following the 18th anniversary of the date of his birth every male citizen and every male residing in the United States, unless they are specifically

exempt from registration, must present themselves and register with the Selective Service System.

Q Do you find in the record before you, the official record, the registration card for John Heffron Sisson, Jr.?

A Yes, sir.

Q Would you please explain, sir, to the members of the jury what a registration card is and what its function is in the system?

A A registration card, Selective Service Form No. 1, is the basic record of all Selective Service procedures. It is the form that is completed at the time the individual presents himself and submits to registration under the Selective Service Law.

Q Is that the form you are holding in your hand, sir?

A Yes, it is.

[fol. 16] Mr. SUCHECKI. May this be marked Government Exhibit 1 in evidence?

The COURT. It is so admitted.

[Selective Service System Registration Card, Form No. 1-A, John Heffron Sisson, Jr., marked Government Exhibit 1 in evidence.]

Q Incidentally, sir, the complete Selective Service file we have subpoenaed through you, sir, was a copy of that file supplied to the defendant and his counsel?

A Yes, it was.

Q At the defendant's request?

A Yes, sir.

Q Now, sir, each registrant when he registers obtains what is called a Selective Service System Number, is that correct?

A That is correct.

Q Would you please explain, sir, to the members of this jury how that number is arrived at?

A The Selective Service Number is assigned by the registrant's local board. It is a four-element number, the first of which is the numerical designation of the State. The second element of the number is the numerical designation of the local board of jurisdiction. The third ele-

ment would be the last two digits of the registrant's year [fol. 17] of birth, and the fourth element of the number is the sequence in which that man was registered with that local board among men who were born in that particular year.

Q Now, sir, will you please tell us what the next step is that occurs in the processing of a Selective Service file.

A After the individual is assigned a Selective Service Number a registration certificate is prepared by the clerk of the local board and mailed to the registrant. Following this, the next step in the processing is the mailing to the registrant of a classification questionnaire.

Q Do you have in this file, sir, a copy of a classification questionnaire?

A Yes, I do, sir.

Mr. SUCHECKI. I submit this as Government Exhibit 2, if your Honor please.

The COURT. So admitted.

[Selective Service System Classification Questionnaire, Form 100, marked Government's Exhibit No. 2.]

Q This classification questionnaire has a form number, sir?

A Yes, Selective Service Form No. 100.

Q This was sent to John Heffron Sisson, Jr. by Local Board No. 114 on what date, sir?

[fol. 18] A July 2, 1964.

Q Is there a place on that form where it states when it was returned?

A It was received back at the local board on July 20, 1964.

Q Is this the form for the registrant to complete and return to the local board?

A It is.

Q Has part of this form been filled out by the Local Board No. 114 before it is sent out?

A Yes, it is.

Q Does this form bear the signature of the person who made it out?

A It does.

Q In this case whose signature appears?

A Agnes M. Grudinski, Clerk of the local board.

Q Her position is what, sir?

A Clerk of local board.

Q The form itself, when it was received, was it executed by John Heffron Sisson, Jr.?

A Yes, sir.

Q This form contains essential information about the registrant to aid in classifying him, is that correct?

A That is the purpose of the form, yes.

[fol. 19] Q This includes various bits of information, is that correct?

A Yes, sir.

Q Calling your attention to Series I IDENTIFICATION, what information did John Heffron Sisson, Jr. give in indentifying himself?

A His name, John Heffron Sisson, Jr. Other names used: None. Date of birth: May 14, 1946, in Boston, Massachusetts, in the United States of America. Current address: Trapelo Road, RFD No. 1, Lincoln, Middlesex County, Massachusetts. Telephone No: 259-8504. Social Security No: 032-34-8964. Name and address of person other than a member of my household who will always know my address: Dr. Warren R. Sisson, 20 Crafts Road, Chestnut Hill, Mass.

Q Did he also give a physical description of himself?

A Yes, sir.

Q What was that?

A Color of eyes: blue; color of hair: brown; height: 5′ 11″; weight: 140 pounds.

Q He was a citizen of what country, sir?

A The United States.

Q Now, sir, is there any indication in Series II as to any military record in this questionnaire?

[fol. 20] A None.

Q Is there any indication that he has been previously married, as far as Series III is concerned?

A The block is checked "I have never been married."

Q Calling your attention to Series IV in the ques-

tionnaire, sir, the registrant listed his family, is that correct?

A Yes, sir.

Q Whom did he list, please?

A Father: Dr. John Heffron Sisson, Trapelo Road, Lincoln, Mass, age, 47. Mother: Barbara Blagden Sisson, Trapelo Road, Lincoln, Mass, age, 44. Sister: Emily Heffron Sisson, Trapelo Road, Lincoln, Mass, age, 17.

Q In Series V, sir, we have something called the occupation of the registrant. What did the registrant list as his occupation?

A Unemployed.

Q Were there any other entries in Series V, sir?

A With regard to Item 7, "My work experience prior to that described in Items 1 and 2, this series, is as a handyman for one summer."

Q He also put in some information about languages he spoke, is that correct, sir?

A He speaks fluently the following foreign languages or dialects: French. "I read and write well the follow- [fol. 21] ing languages or dialects: French."

Q Now as to Series VI and Series VII, they were also left blank, is that correct?

A Yes, sir.

Q Calling your attention to Series VII, what does that refer to?

A Series VIII is the series devoted to conscientious objection.

Q Would you please read that to us, sir?

A "DO NOT SIGN THIS SERIES UNLESS YOU CLAIM TO BE A CONSCIENTIOUS OBJECTOR. I claim to be a conscientious objector by reason of my religious training and belief and therefore request the local board to furnish me a Special Form for Conscientious Objector (SSS Form No. 150)." There is a line for the registrant's signature. It is blank.

Q Now calling your attention to Series IX, sir, what does that describe?

A Series IX is the series devoted to the man's education.

Q What does that disclose, sir?

A It shows that at the time the questionnaire was completed the registrant had completed two years of college, majoring in Latin American Studies at Harvard [fol. 22] College, Cambridge. He had not received a degree and was presently a full-time student at Harvard majoring in Latin American Studies preparing for the Foreign Service and expected to receive a degree in June of 1966.

Q Going through the remainder of the form, Colonel, I believe Series X has been left blank, is that correct, sir?

A That is correct.

Q Series XI is also blank?

A Right.

Q In Series XII he indicated what, sir?

A No court record. He has no court record whatsoever.

Q And Series XIII?

A He is not a sole surviving son.

Q And, finally, there is the registrant's certificate. And has that been executed?

A It was signed John H. Sisson, Jr., July 13, 1964.

Q Now part of the classification questionnaire to which you have not referred yet is the part the registrant never sees formally, isn't that correct?

A Page 8 of the classification questionnaire is devoted to the minutes and actions of the local board. These entries are recorded by the local board.

Mr. SUCHECKI. You may inquire.

[fol. 23] *Cross-Examination*

Q [By Mr. Flym] Referring to Series VIII, you testified the registrant did not indicate he was a conscientious objector at the time he originally registered with the local board, is that correct?

A When he completed the questionnaire, sir.

Q When was the questionnaire completed?

A July 13, 1964.

Q When did he register with the local board?

A June 4, 1964.

Q So approximately a month elapsed between the registration and submission of this document?

A Right.

Q Would this preclude the defendant from subsequently filing a claim for C.O.?

Mr. SUCHECKI. Objection, your Honor.

The COURT. In view of Col. Feeney's authority, I will allow that question to be put because he has administrative authority to familiarize himself with it, and that makes him an expert. You may answer.

A May I have the question.

Q Would the fact that the registrant did not claim that he was a conscientious objector at the time he com-
[fol. 24] pleted this form, Exhibit 2, preclude his subsequently filing a claim as a conscientious objector?

A No, sir.

Q He could do so a year later?

A Yes, sir.

Q Two years later?

A Yes, sir.

Q Four years later?

A Right.

Q Indeed the question would be at the time that he makes the claim that he is a conscientious objector whether he is then a conscientious objector, is that correct?

A He is not precluded from filing a claim at any time.

Q Yes. When he does file the claim, the question is not whether he was a conscientious objector at the time he filed this form, the question is whether he is a conscientious objector at the time that he makes the claim?

A Yes, sir.

Q You do not in the ordinary course of performing your functions, have occasion to review the documents in the registrant's file, do you?

A Yes, I do.

Q You do. What are those circumstances?

A There are many circumstances that would occa-
[fol. 25] sion my reviewing the records. If the registrant or a member of his family or his employer petitioned the State Director to intercede in the case, I would review it on that occasion. It is a standard practice that I would

review any appeal involving a claim of conscientious objection. I personally review all appeals to the Massachusetts Appeal Board. I personally review every record before an individual is reported to the United States Attorney. Those are some of the occasions on which I personally would review a file.

A In the ordinary course of events, if the registrant registers with his local board, and subsequently is ordered to report for induction and indeed reports, you would have no occasion to review his file?

A Under ordinary circumstances, no.

Q You testified that according to this form the defendant was scheduled to graduate from Harvard College in June, 1966?

A That is what it says here.

Q Assuming that fact to be accurate, you don't know that of your own knowledge?

A No, I don't.

Q You rely on the document for the information to which you testified?

[fol. 26] A That is correct.

Q Assuming that is a fact, that is, that he would graduate in June of 1966, and considering the state of the law as it was in 1966 prior to the enactment of the 1967 Act, and assuming that the defendant had registered for graduate school, would he have been entitled to a 2-S deferment?

Mr. SUCHECKI. Objection, your Honor.

The COURT. Sustained.

Mr. FLYM. No further questions.

The COURT. Is there any redirect examination?

Mr. SUCHECKI. No, sir.

The COURT. You are excused, Col. Feeney. Next witness.

Mr. SUCHECKI. Miss Grudinski.

AGNES MARGARET GRUDINSKI, Sworn

Direct Examination

Q [By Mr. Suchecki] Would you please give us your full name, M'am?

A Agnes Margaret Grudinski.

Q What is your occupation?

The COURT. Would you please spell your last name?

[fol. 27] The WITNESS. G-r-u-d-i-n-s-k-i.

The COURT. Thank you.

Q What is your occupation?

A Executive Secretary.

Q How long have you been employed at Local Board No. 114 at West Concord, Massachusetts?

A Eighteen years.

Q And you are here subject to subpoena, are you not?

A Yes, I am.

Q And the subpoena requested that you bring the Selective Service file of one John Heffron Sisson, Jr., is that correct?

A That is correct.

Q And is that file presently before you?

A Yes.

Q And you are the custodian of this file?

A Yes, I am.

Q This is a regular Government record?

A Yes, it is.

Q And these records are made in the ordinary course of business?

A Yes, they are.

Q And it is the ordinary course of business to make such records?

[fol. 28] A Yes, it is.

Q And the entries in these records were made at or about the time reflected in them, is that correct?

A Yes.

Q Calling your attention specifically to Government Exhibit 2, the classification questionnaire, and calling your attention to the face of that questionnaire, who filled the upper half of that form out?

A I did.

Q Would you please tell us what you put on that form?

A I put the date of mailing, July 2, 1964, and John Heffron Sisson, Jr., Selective Service No. 19-114-46-137,

Trapelo Road, Lincoln, Middlesex County, Massachusetts, 01773.

Q Does your signature appear on that page?

A Yes, it does.

Q Calling your attention to the date of mailing, who filled that out?

A I did.

Q What is that date of mailing?

A July 2, 1964.

Q There is another line reading COMPLETE AND RETURN BEFORE—what date?

A July 13, 1964.

[fol. 29] Q And who filled that out?

A I did.

Q I also notice a stamp on the face of this questionnaire. What is the date of that?

A July 20, 1964.

Q What does that indicate?

A That indicates the date the questionnaire was returned to the local board.

Q Do you know who put that on there?

A Normal procedure it would be whoever was in the office.

Q Now do you know who John Heffron Sisson, Jr. is?

A Yes. I see him.

Q Do you see him in the courtroom today?

A Yes, I do.

Q Would you please point him out?

A Right over there.

Mr. SUCHECKI. Would you please stand, sir?

[The defendant rises.]

Q Is this the man, please?

A Yes.

Mr. SUCHECKI. Thank you, sir.

Q Now following this man's registration—you sent this classification questionnaire to him, is that correct?

[fol. 30] A After the registration, after the registration certificate is mailed, then of course the questionnaire is mailed.

Q What action did you take with regard to the registrant after you received this classification questionnaire from him executed as it was?

A After I received it?

Q Yes, M'am.

A We date the time it is received and we put it in his sheet and record it in the classification book.

Q Then what happens?

A We file it away to be ready for the Board meeting.

Q Calling your attention to the minutes of the Board meeting that appear on the last page of this document, and calling your attention to on or about October 6, 1964, what happened at that time?

A On October 6, 1964 the local board classified John 2-S.

The COURT. It is very difficult to hear you.

Q Would you speak up a bit louder, M'am? The jury is straining very hard to hear you.

A On October 6, 1964 he was classified 2-S.

Q What does that mean?

A 2-S is student deferment.

[fol. 31] Q Student deferment?

A Yes.

Q What was the vote of the board on that day?

A Yes: three; No: zero.

Q There is an entry on that form dated October 7, 1964, "SSS Form 110 mailed to registrant." What does that mean?

A That is SSS 110, the Notice of Classification, notifying the registrant of his classification.

Q How long is a classification kept by the local board in normal practice, once a man is classified 2-S?

A Those are reviewed every year.

Q Reviewed every year?

A Yes.

Q Calling your attention to October 11, 1965, what happened on that date?

A He was reclassified 2-S.

Q And then on October 19th?

A He was mailed the 110 notifying him of his student deferment.

Q Calling your attention to June 17, 1966, there is an entry in the minutes. Would you please tell us what that entry is?

A That is "Form 223 mailed to registrant." That is [fol. 32] a Notice to Report for armed forces physical examination.

Q What happened to that, M'am?

A He didn't have to report for that because we received information from the school that he was still a student.

Q So as a student he was not required to report, is that correct?

A That is correct.

Q Calling your attention to November 7, 1966, what happened then?

A He was reclassified 2-S.

Q On November 8, 1966?

A SSS Form 110 mailed to registrant.

Q On June 19, 1967 what happened then?

A He was classified 2-A.

Q What does the 2-A mean?

A That is when the board receives notification he was going into the Peace Corps.

Q On June 20th, again?

A He was mailed the SSS Form 110, notifying him of his classification.

Q Finally, calling your attention to November 20, 1967, what happened then?

A He was reclassified 1-A.

Q On November 21, 1967 did you mail something out [fol. 33] to him on that day?

A Yes. The SSS Form 110 was mailed to him notifying him of his 1-A classification and Form 217 was mailed notifying him of his right to personal appearance and right of appeal.

Q Calling your attention to the file before you, do you have that advice of right to personal appearance and appeal in the file?

A Yes.

Mr. SUCHECKI. May this be marked Government Exhibit 3, if your Honor please?

The COURT. Admitted without objection.

[SSS Form 217, Selective Service System ADVICE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL, marked Government Exhibit 3.]

Q Calling your attention to this form, who made that form out?

A I did.

Q And does your signature appear on that form?

A Yes, sir, it does.

Q In addition to that form, you mailed out, you said something else. What was it you said?

A SSS Form 110.

Mr. SUCHECKI. May this be marked Government Exhibit 4 for identification?

[fol. 34] The COURT. For identification only, yes.

[SSS Form 110, Selective Service System NOTICE OF CLASSIFICATION, marked Government Exhibit 4 for identification.]

Q Calling your attention to Government Exhibit 4 for identification, what sort of a form is that?

A Notice of Classification.

The COURT. I can hardly hear you. I think the jury must have the same difficulty.

A That is the Notice of Classification.

Q What is the form number?

A SSS Form 110.

Q Is that the SSS Form 110 or one similar to that form that you sent to John Heffron Sisson, Jr.?

A Yes, it is.

Mr. SUCHECKI. I ask that it be submitted into evidence, your Honor.

The COURT. Exhibit 4 for identification is now admitted as Exhibit 4.

[Government Exhibit 4 for identification received in evidence.]

Q Calling your attention to the—I believe the entry is—the first form you sent out was SSS Form 110?

A That is correct.

Q Would you please read to the jury—perhaps I bet-
[fol. 35] ter read it.

Mr. SUCHECKI. I call your attention to this form, members of the jury. It has the following information on it—it lists on one part of the form the Selective Service Classification, the various classifications in which registrants may be registered. A Special Notice appears below the Selective Service Classifications and states: "A registrant who was deferred on or before his 26th birthday should ascertain from his local board if his liability has been extended to his 28th or 35th birthday. (See other side.)"

I also call to the attention of the jury the following information: NOTICE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL. If this classification is by a local board, you may, within 30 days after the mailing of this notice, file a written request for a personal appearance before the local board (unless this classification has been determined upon such personal appearance). Following such personal appearance you may file a written notice of appeal from the local board's classification within the applicable period mentioned in the next paragraph after the date of mailing of the new notice of classification. If you do not wish a personal appearance but do want to appeal your case, you may do
[fol. 36] so by making such an appeal in writing, to your local board, within the specified time.

Appeal from classification by local board may be taken by filing written notice of appeal with your local board within one of the following periods after the date of mailing of this notice:

(1) 30 days if the registrant is located in the United States, its terrotories, possessions, Canada, Cuba, or Mexico OR;

(2) 60 days if the registrant is located in a foreign country other than Canada, Cuba or Mexico.

You may file with your local board a written request that the appeal be submitted to the appeal board having jurisdiction over the area in which your principal place of employment or current place of residence is located.

If an appeal has been taken, and one or more members of the appeal board dissented from such classifica-

tion, you may file a written notice of appeal to the President with your local board within 30 DAYS after the mailing of this notice.

Your Government Appeal Agent, attached to your Selective Service local board, is available to advise you regarding your rights and liabilities under the Selective [fol. 37] Service Law.

Your Selective Service Number, shown on the reverse side, should appear on all communications with your local board. Sign this form immediately upon receipt.

FOR INFORMATION AND ADVICE, GO TO ANY LOCAL BOARD."

On the reverse side we have the Notice of the Selective Service System advising that you have been classified in accordance with the Selective Service Regulations, and these are set out on the opposite side, and they further tell you that when a subsequent Notice of Classification is received you should destroy the one previously received, retaining only the latest.

And then there are further regulations and notices, requiring the keeping of the registration card in the possession of the registrant.

Q Now in addition to this Form 110 you stated a Form 217 was mailed to the registrant; is that correct?

A That is correct.

Q And that is Exhibit No. 3.

Mr. SUCHECKI. I wish to call to the attention of the jury that in Exhibit 3 there is ADVICE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL, in large letters, and the Notice does indicate that 30 days is given as the time in which this appeal may be made and it is [fol. 38] signed by Agnes M. Grudinski.

Q Was any appeal filed of this classification with the local board?

A No, there wasn't.

Q Did either one of the forms you mailed out at that time ever come back as undelivered or undeliverable?

A No, they did not.

Q What next of significance happened in this case?

A He was then mailed a Form 223 ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION.

Q Do you have that form, M'am?

A Yes, I have.

Mr. SUCHECKI. May this be a Government exhibit?

The COURT. Without objection it is admitted as Exhibit 5.

[SSS Form 223, ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION, marked Government Exhibit 5.]

Q After this form was mailed what next happened of significance in this case?

A We received a letter from the registrant saying he was going to Alabama.

Q Do you have a copy of that letter?

A Yes, I have.

Mr. SUCHECKI. May this be a Government exhibit, [fol. 39] if your Honor please.

The COURT. It is admitted without objection. Exhibit 6. May I see it, please?

[Letter dated December 26, 1967 from John H. Sisson, Jr. to Local Board No. 114, marked Government Exhibit 6.]

Q After this letter was received what next happened of significance in this case?

A We then received a TRANSFER FOR ARMED FORCES PHYSICAL EXAMINATION OR INDUCTION from Local Board No. 27, Jackson, Mississippi.

Q Does your signature appear on that paper?

A Yes, it does.

Mr. SUCHECKI. May this be a Government exhibit?

The COURT. Without objection it is admitted. Exhibit 7.

[SSS Form 230, TRANSFER FOR ARMED FORCES PHYSICAL EXAMINATION OR INDUCTION, marked Government Exhibit 7.]

Q After the Transfer Order was entered what next happened in this case?

A Then after the physical was completed we received the papers back from Mississippi.

Mr. SUCHECKI. May this be the Government's next exhibit?

The COURT. Admitted without objection. Exhibit 8.

[fol. 40] [STATEMENT OF ACCEPTABILITY marked Government Exhibit 8.]

Q Following the receipt of this record, what happened in this case?

A Then the registrant's copy of SSS Form 62 was mailed to him.

Q Is there a copy of that Form 62 attached to that?

A Yes, there is.

Mr. SUCHECKI. Mr. Foreman and members of the jury, this is the STATEMENT OF ACCEPTABILITY. It states: SISSON, JOHN HEFFRON JR. Present home address: 900 North Parrish Street, Jackson, Mississippi. Selective Service No. 19-114-46-137. Local Board Address: LB 27, Jackson, Mississippi.

"The qualifications of the above-named registrant have been considered in accordance with the current regulations governing acceptance of Selective Service registrants and he was this date" and there is a cross placed in a space—"found fully acceptable for induction into the armed forces." The date of it is 1 February 68. Place: AFEES Jackson, Mississippi. Typed or stamped name and grade of joint examining and induction station commander: Karl W. Scholz, Captain, AGC. The form number is DD Form 62.

[fol. 41] Q Is a copy of this form sent to the registrant?

A Yes, there is.

Q And that was done in this case?

A Yes, it was.

Q After this form was sent out, what next of significance happened in this case?

A On March 4th we received a letter requesting an SSS Form 150 claiming conscientious objection.

Q Do you have a copy of that letter?

A Yes, I have.

Mr. SUCHECKI. May I please enter this as a Govern exhibit, your Honor?

The COURT. Without objection it is admitted. Exhibit 9.

[Letter dated February 29, 1968 from John H. Sisson, Jr. to Local Board No. 114, marked Government Exhibit 9.]

Q Following receipt of this letter at the local board what did you do?

A I completed the first part of the SSS Form 150 and mailed it to the registrant.

Q Do you have a copy of that form?

A We don't keep a copy of those.

Q Is that your normal procedure?

A Yes, it is.

[fol. 42] Mr. SUCHECKI. If your Honor please, may this be marked for identification?

The COURT. It may. Exhibit 10 for identification only.

[SSS Form 150, Selective Service System, Special Form for Conscientious Objector, marked Government Exhibit 10 for identification.]

Q I offer you this, M'am, as a sample of the form used in sending out forms usually sent out by the Selective Service System to conscientious objectors. Is that similar to the form you sent out to Mr. Sisson?

A Yes, it is.

Q What did you fill out on the form?

A It put the date of mailing, and after "COMPLETE AND RETURN BEFORE" I put the date there, and then I put John Heffron Sisson, Jr., his Selective Service Number and the mailing address.

Q This was mailed to him when?

A Mailed to him on March 4, 1968.

Q Was it ever returned to you as undelivered or undeliverable?

A No.

Q Was it ever returned to you as having been filled out as an application for conscientious objector status?

[fol. 43] A No.

The COURT. Without objection it is admitted as Exhibit 10.

[Government Exhibit 10 for identification received in evidence.]

Q Now calling your attention to the minutes of the Executive Board, could you tell us what next of significance happened in this case?

A On March 18, 1968 an ORDER TO REPORT FOR INDUCTION was mailed to the registrant.

Q Do you have a copy of that order?

A Yes, I have.

Mr. SUCHECKI. May this be the Government's next exhibit, please?

The COURT. It is admitted without objection as Exhibit 11. March 18, 1968, ORDER TO REPORT FOR INDUCTION. That is the order upon which this prosecution is based, is it not?

Mr. SUCHECKI. Yes, your Honor.

The COURT. Admitted.

[SSS Form 252, ORDER TO REPORT FOR INDUCTION, marked Government Exhibit 11.]

Mr. SUCHECKI. I call attention to the members of the jury that the Selective Service System ORDER TO [fol. 44] REPORT FOR INDUCTION states: "To: John Heffron Sisson, Jr., Post Office Box 457, Greenville, Mississippi 38701.

March 18, 1968.

Selective Service No. 19-114-46-137.

Greeting:

You are hereby ordered for induction into the Armed Forces of the United States, and to report at Local Board No. 114, 34 Commonwealth Avenue, West Concord, Mass. on April 17, 1968 at 6:45 a.m. for forwarding to an Armed Forces Induction Station.

Agnes M. Grudinski."

There are various notices as to previous Military Service, Social Security information, transportation information, etc.

It further states: "This Local Board will furnish transportation, and meals and lodging when necessary, from the place of reporting to the induction station where you will be examined. If found qualified, you will be inducted into the Armed Forces. If found not qualified, return transportation and meals and lodging when necessary, will be funished to the place of reporting.

You may be found not qualified for induction. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are not inducted. If employed, inform your employer of this possibility. Your employer can then be prepared to continue your employment if you are not inducted. To protect your rights to return to your job if you are not inducted, you must report for work as soon as possible after the completion of your induction examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

Willful failure to report at the place and hour of the day named in this order subjects the violator to fine and imprisonment. Bring this order with you when you report."

This is SSS Form 252.

Q And this form was mailed to the registrant when?

A March 18, 1968.

Q What next happened in this case?

A The registrant reported.

The COURT. The registrant did report?

The WITNESS. He did report at the office.

Q And what happened there?

A Transportation was given to the registrant to get to the examining station.

[fol. 46] Q Did you see him that morning?

A Yes, I did.

Q And he took the bus and left?

A No. He took the train.

Q I'm sorry. He took the train and left.

Mr. SUCHECKI. You may inquire.

Cross-Examination

Q [My Mr. Flym] Miss Grudinski, I believe you testified that the defendant was classified 2-S, is that correct?

A Yes, he was.

Q What was the date?

A The first classification was October 6, 1964.

Q That was the classification, 2-S?

A Yes.

Q When was he classified 2-A?

A On June 19, 1967.

Q What was the basis of his being classified 2-A?

A Notification that he had made application and had been accepted for the Peace Corps.

Q Subsequently his classification was changed to 1-A, is that correct?

A After we got notification that he was no longer in the Peace Corps.

[fol. 47] Q When was that?

A October 6, 1967. We were notified he was terminated on September 22, 1967.

Q When was he reclassified 1-A?

A November 20, 1967.

Q Approximately three months later, I believe you testified, on February 29, 1968, you received a letter requesting an SSS Form 150, which is Exhibit 9?

The COURT. The answer, I assume is yes. Is that right?

The WITNESS. Yes.

Mr. FLYM. I call the jury's attention to what the letter says:

"Dear Sir:

I find myself to be conscientiously opposed to service in the armed forces. Would you please send me SSS Form No. 150 so that I might make my claim as a conscientious objector. Thank you for your cooperation."

Q In the interim between Mr. Sisson's reclassification to 1-A and the time that he requested a Form 150 to claim a conscientious objector deferment you received notification that he was employed with the Southern Courier in Alabama?

A We got a letter from the registrant.

[fol. 48] Q It was approximately December 28th, was it?

A We received the letter December 28th.

Q Do you have the sample form which you sent or the sample form which is an accurate copy of the form you sent the defendant, Exhibit 10?

A What form is that?

Q The 150.

A I don't have it here.

The COURT. The jury may have Exhibit 10.

Q This is an accurate copy of the form you sent him, is that correct?

A Yes.

Q "Instructions, Series Ib states, does it not, "I am, by reason of my religious training and belief conscien-

[fol. 49] tiously opposed to participation in war in any form and I am further conscientiously opposed to participation in non-combatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and non-combatant training and service in the Armed Forces." Is that correct?

A Yes.

Q Series II, which concerns the bottom part of Page 1 and the upper half of Page 2, requests information about the application's religious training and beliefs; is that correct?

A Correct.

Q And there are seven numbered paragraphs requesting information with respect to the religious training and belief of the applicant, is that correct?

A That is correct.

Q Approximately, well, exactly two weeks after you mailed Form 150 you mailed an order to the defendant to report for induction, is that correct?

A That is correct.

Q What was the date that you included on the Form 150 by which time the defendant was required to submit his Form 150?

A What was the beginning of the question?

[fol. 50] The COURT. What was the date by which he was required to respond to Form 150 according to its own terms?

The WITNESS. He was supposed to return that within ten days after it was mailed to him.

Q That is within ten days, is that correct?

A Yes.

Q You mailed it on March 4th?

A Yes.

Q You mailed it to Mississippi, is that correct?

A Yes.

Q He was required to return it by March 14th, is that correct?

A That is correct.

Q What is the present claim of time within which an applicant for C.O. status must return the form?

Mr. SUCHECKI. Objection, your Honor.

The COURT. The objection is sustained. Irrelevant.

Mr. FLYM. May this be marked for identification?

The COURT. What is this?

Mr. FLYM. The minutes.

The COURT. They may, if agreed to. Are they being used in examining this witness?

Mr. FLYM. Yes, your Honor.

[fol. 51] The COURT. All right. Exhibit A for identification only.

[Minutes of Local Board Meeting, SSS Form 112, marked Defendant's Exhibit A for identification.]

Q Can you identify this document?

A Yes.

The COURT. I can't hear you.

A The minutes of the local board meeting of November 20, 1967.

Q What meeting was that insofar as the defendant is concerned?

A That is the meeting that he was reclassified 1-A.

Q Do you have the minutes of the meeting at which the defendant was ordered to report for induction?

A The minutes? No.

Q Are there such minutes in existence?

The COURT. I beg your pardon? I can't hear you. Are there such minutes in existence?

The WITNESS. Not at our office, no.

Q I'm sorry?

A No.

Q Not at your office. Are there minutes of that meeting in existence in any office?

A I wouldn't know.

[fol. 52] Q These minutes reported the action of—

The COURT. I want the record to be clear. By "these minutes" you mean Exhibit A for identification?

Mr. FLYM. Exhibit A for identification, your Honor.

Q These minutes reflect the actions taken, the classifications considered and acted upon by your local board on November 20, 1967, is that correct?

A That is correct.

Mr. SUCHECKI. No objection.

The COURT. Admitted as Exhibit A. I would like to see them, too. You may proceed.

Mr. FLYM. I need them.

The COURT. You want them. All right. Go ahead.

Q It appears on the first page of Exhibit A that the meeting lasted from 7:30 to 10:30, is that correct?

A That is correct.

Q And there are ten pages setting out the names of the registrants whose classifications were considered at that meeting, is that correct?

A There are eleven.

Q I see. How many names appear on each page, do you know?

A Twenty-four.

Q And they are all filled except for the last page on [fol. 53] which are set forth the names of fourteen individual, is that correct?

A That is correct.

Q So that in all 264 classifications were reviewed at that meeting, is that correct?

A Yes.

Q Including the defendant's, is that correct?

A That is correct.

Q These are the only minutes which exist with respect to that meeting, is that correct?

A That is correct.

Q That is, there is no record of discussions involving the classification of the defendant or of the registrants who are listed on that Exhibit A, is that correct?

A That is correct.

Q How frequently does Local Board 114 meet?

A At least once a month.

Q At least once a month. Do you have a record of when it met in February of 1968?

A Not with me here. At the office.

Q Do you have a record of when it met in March of 1968?

A At the office.

Q You don't remember when?

A Not exactly.

[fol. 54] Q But the board met prior to the mailing of the order to report for induction, which was sent to the defendant, is that correct?

A Prior to? I don't know what the dates were.

The COURT. Well, the Order of Induction, about which the question asked, is March 18, 1968, is that correct?

Mr. FLYM. Yes.

The COURT. The question addressed to you is do you know whether the board met before that order was issued? Obviously you know it met before the order was issued, but did it meet before the order was issued and considered the order? Is that what the question means?

Mr. FLYM. Yes, your Honor. Thank you.

A I don't remember the date they met.

The COURT. Do you understand that you are being asked as to whether you know whether the board considered whether to issue the order?

The WITNESS. To issue the order? Well, I received the order—

The COURT. No. Do you know whether the board considered whether to issue the order, which is Exhibit 11? Do you know whether the board considered whether

[fol. 55] to issue that Induction Order?

The WITNESS. No, I don't.

Q Can you tell me whether you at any time mailed any information to the defendant other than the information to which you have already testified?

Mr. SUCHECKI. Objection, your Honor. Would you limit that, please?

The COURT. Yes. I think that is a fair objection.

Mr. FLYM. Yes.

The COURT. Is there something else you want to ask on cross-examination?

Mr. FLYM. Only one question, your Honor. I am looking for, I believe it is Exhibit 2.

The COURT. Classification Questionnaire, is that what you want?

Mr. FLYM. Yes, your Honor.

Q Referring to Exhibit 2, are you responsible for making the entries which appear on the last page thereof?

A Some of them, yes.

Q Who else would make the entries thereon?

A Local board members.

Q Did you make the entries which appear in writing on the right-hand side of the page?

[fol. 56] A No, I didn't.

Q Do you know who did?

A The board members.

Q Insofar as you know, this is an accurate record of actions taken by the local board, is that correct?

A That is correct.

Mr. FLYM. No further questions.

The COURT. Is there any redirect examination?

Mr. SUCHECKI. No, sir.

The COURT. The Court will take a ten minutes' recess.

[Recess.]

The COURT. Your next witness, Mr. Suchecki.

Mr. SUCHECKI. Lt. Godin.

ALFRED M. GODIN, Sworn

Direct Examination

Q [By Mr. Suchecki] Would you please state your full name, your rank and your occupation?

A Alfred M. Godin, First Lieutenant, United States Marine Corps.

The COURT. Please spell your last name.

The WITNESS. G-o-d-i-n, sir.

Q What is your assignment, sir?

[fol. 57] A I am Processing Officer at the Armed Forces Examining and Entrance Station, Boston.

Q How long have you been so assigned?

A Eighteen months.

Q Were you assigned to that position on or about April 17, 1968?

A Yes, I was.

Q Specifically what were your duties on that day?

A I took part in the induction processing as well as the enlisting phases.

The COURT. You were asked what your duties were.

The WITNESS. Sir, the Induction Officer.

Q Did you, sir, participate in the induction process that day to step forward?

A Yes, sir. I conducted the induction ceremony in the ceremonial room.

Q Calling your attention to registrant John Heffron Sisson, Jr., do you see him in this courtroom, sir?

A Yes, sir, I do.

Q Did you see him on that particular morning, sir?

A Yes, sir, I did.

Q Would you please tell us what happened and what you said to him and what he said to you?

A Sir, he took part in the induction ceremony, which [fol. 58] in essence follows these steps: he is informed that he is about to be inducted into the armed forces of the United States, that when his name and Service are called he will take the step forward. A roll call was conducted and he refused to take the step forward. After he refused to take the step forward he was advised of

the consequences, the fact that he was in violation of the Selective Service Act of 1967, and again offered a second time around to make sure he did not change his mind about refusing induction, I went through the prescribed procedure again and once more he did refuse induction.

Q Then what did you do, sir?

A At that time I took him into my office and, as policy prescribes, he was asked to make a statement to the effect that he did refuse induction, but he cared not to make any statement whatsoever.

Q Then what did you do, sir?

A Then he was sent home.

Mr. SUCHECKI. You may inquire.

Cross-Examination

Q [by Mr. Flym] Lieutenant, can you, insofar as you can recall it, say exactly what you said to the defendant at the time that you advised him of the conse-

[fol. 59] quences of his act?

A Do you mean after he refused the first step?

Q What did you say with respect to the first refusal?

The COURT. I think the question just put by the witness seems to be proper because on the direct testimony he indicated that it was after the defendant did not take the step forward on the first occasion that he, the witness, advised the defendant of the consequences.

You want to know exactly what those words were so far as the witness recalls them?

Mr. FLYM. Yes, your Honor.

The COURT. Then please tell us, so far as you can recall.

The WITNESS. All right, sir. In essence I advised him that it was in fact a serious offense to refuse induction, that anyone refusing induction would have to suffer the consequences, and we would be required to make a written report to the United States Attorney, and also the fact that he probably would be indicted and convicted in a court for this offense.

Q This is all you said to him?

A Yes, sir, as far as I can recollect. Of course, I also go through this with every individual that probably

will refuse induction. I try to get across to these people: [fol. 60] do they know what the consequences are? Do they know what refusing induction is, and so forth?

Q In apprising him of the consequences you said what you just testified to and nothing else, is that correct?

A Yes, sir. That is as much as I can recollect.

Q So far as you can recall it, what was the exact language you used when ordering everyone to step forward the first time?

A "You are about to be inducted in the armed forces of the United States," specifically into the United States Army. "When your name is called, you will take one step forward and such step will constitute your induction into the armed forces." Then we proceed to the roll call, and that is the time he refused to step forward.

Q After he refused the second time, you testified you invited him into your office, is that correct?

A Yes, sir.

Q Then you spoke to him, right?

A I simply asked him if he wished to make a statement. My regulations tell me that I give a man two occasions by which to accept induction under normal procedures. If he refuses the second time around we are to ask him if he desires to make a written statement to the effect that he did refuse induction in order to give [fol. 61] him ample time to explain why, and so forth, but in his case he did not want to make a statement.

Q Can you recall—I have asked you this before and if you have answered it, so be it, but if you can, could you try to quote yourself when you asked the defendant to make a statement about his refusal to submit to induction?

A I told him the exact words prescribed in the book.

Q What are the exact words?

A "I would like you—I am requesting, I am asking you to make a statement to the effect that you did refuse induction. However, I also want you to be aware of the fact that you do not have to make a statement."

Q That statement is the statement prescribed by your regulations, is that correct?

A Yes, sir. This is the regulation that prescribes that the Induction Officer ask the man to make a statement in the event he refuses the second time around.

Q And the statement that the man is to make is a statement that he refused induction?

A Yes, sir.

Q It does not in terms ask him to explain why he refused induction, does it?

A Right, sir.

Q That is, that is correct, it does not?

[fol. 62] A This is strictly a statement to the effect that he refused induction. This is all we ask him.

Q You don't inquire into the reasons why he is refusing induction?

A Mr. Sisson had initially along the way, prior to getting down to the induction room—

The COURT. I think you better answer the question. As a matter of practice, and in this case, do you and did you ask anything about the reason why the defendant refused induction?

The WITNESS. Yes, sir, I do. This is in the interim between the first and second refusal while I am in the oath room with the man.

Q What did you ask him?

A Pardon?

Q What did you ask him in the interim?

A I asked him basically what was the reason he was refusing. Was it religious belief? This is what he indicated to me.

Q He indicated to you that the reason he was refusing induction was because of his religious belief?

A Yes, sir, conscientious objector status.

Q That is what he said to you?

A That is right.

[fol. 63] Q When did he say that?

A Right after the first refusal.

Q After the first refusal. Now at the time of the first refusal there were approximately how many men in the room?

A I don't recollect the number. I believe there were nine inductees on that day.

Q The other eight inductees stepped forward, is that correct?

A Yes, sir. He was the only refusal on the 17th of April.

Q Approximately how much time elapsed after he refused to step forward and they had stepped forward before the conversation to which you just testified occurred?

A Approximately three to five minutes.

Q Were the other eight people in the room at that time?

A No, sir. He was counseled alone.

Q He was alone at the time?

A Yes, sir.

Q What did you ask him?

A Well, first, before I asked him anything, I advised him again of the consequences of refusing induction and advised him of the fact it was a felony, and I told him of the consequences, and I asked him if he was sure he knew what he was doing. And again we go right back to [fol. 64] the first induction ceremony—the second induction ceremony.

Q What you just testified to does not include any conversation that you may have had with the defendant. Did you have such a conversation?

A No, I did not have any conversation, what you might call a conversation. I am strictly there to try and establish the fact why this man is refusing induction so that in the event the United States Attorney needs any other information other than the fact he refused it is available.

Q Is there any regulation which requires you to inquire about the reasons for the refusal to submit to induction by anyone?

A No, sir.

Mr. SUCHECKI. Your Honor, that has been answered.

The COURT. That is a question which you, I think, ought not to put to him, but since the answer was No, I am sure you are all agreed that that is the correct answer.

Q You decided on your own to inquire as to why this defendant refused induction, is that correct?

Mr. SUCHECKI. Objection.

The COURT. Well, he may answer that. You did this on your own?

[fol. 65] The WITNESS. Yes, sir.

Q What did you ask him?

A What his reasons for refusing induction were.

Q In those words, you said, "What are your reasons for refusing induction?"

A Yes, sir. Actually refusal is in the same category—

Q Do you ask everyone who refuses the same question?

A Yes, sir. Like I said, after this man refuses induction, as far as I am concerned, this is an informal type thing between the man and myself because, again repeating what I said initially, I am there to inform the man, making sure these people are not just doing this and maybe not knowing what is behind the seriousness of this offense.

Q After he refused induction who did you notify about the refusal?

A We notified the United States Attorney by letter, a copy to the Selective Service Headquarters, as well as his local board, and his records are returned to the local board indicating the fact that he did refuse.

Q And the notice that he refused is in fact submitted on a form for that purpose, is it not?

A The form where his records are delivered to the AP's are returned with a mark, with a notation "Re-
[fol. 66] fused" but this is not notice of refusal.

Q You yourself wrote something on this form to the effect that Mr. Sisson had refused to submit to induction, is that correct?

A I did not write the word "Refused" itself but I signed an authenticated form to verify the entry.

Q In any event, you were responsible for notifying the authorities, the United States Attorney's office, about Mr. Sisson's refusal to submit?

A Yes, sir.

Q Did you anywhere at any time communicate your conversation with the defendant wherein he supposedly said that he refused because he was a religious conscientious objector?

A I did not. My official notification letter stated that the man was offered the opportunity to execute a statement but he refused to make a statement.

Q That in fact is the standard way in which to notify the United States Attorney's office about anyone who refuses induction, is it not?

A Yes, sir, by official letter.

Q Indeed you never notified the United States Attorney's office about the reasons why a man refuses induction, do you?

[fol. 67] A Again back to this fact that we ask the man to make a statement. A lot of times a man may come in and want to refuse. What basis is there for refusing? He has a statement or he brings in a letter or he desires to sit down and write a statement himself which has to accompany the letter to the United States Attorney.

Q You yourself did not undertake to write a description of the informal conversation you indicated you conducted?

A No, sir.

Q You have never done this?

A No, sir, I never have.

Mr. FLYM. No further questions.

The COURT. Is there any redirect examination?

Mr. SUCHECKI. No, sir.

The COURT. You are excused.

Mr. SUCHECKI. The Government rests, if your Honor please.

Mr. FLYM. Mr. Sisson.

JOHN HEFFRON SISSON, JR., Sworn

Direct Examination

Q [By Mr. Flym] Would you state your name and address?

A John Heffron Sisson, Jr., Trapelo Road, Lincoln, Massachusetts.

[fol. 68] Q You are the John Heffron Sisson, Jr. who is charged with refusing to submit to induction in this case?

A Yes, I am.

Q There was testimony in court this morning and you heard that testimony, is that correct?

A I did.

Q There was testimony that you attended Harvard College. Did you?

A Yes.

Q Did you graduate from Harvard College?

A Yes, I did.

Q When did you graduate?

A June, 1967.

Q Prior thereto what school did you attend?

A Phillips Exeter Academy in Exeter, New Hampshire.

Q Would you keep your voice up?

A Yes.

Q Where were you born?

A Boston, Massachusetts.

Q Have you ever resided anywhere outside Massachusetts?

A Yes, for a short length of time.

Q Your present address is in Lincoln, is that correct?

A Yes, sir.

Q How long have you lived there?

[fol. 69] A Since 1951.

Q Since 1951. Have you ever been charged or convicted of any offense except for minor traffic violations?

A No, I have not.

Q Lt. Godin testified to a conversation which occurred between your first and second refusals to step forward. Did you hear his testimony with respect to that?

A Yes, I did.

Q Did the conversation occur?

A Not to my knowledge and recollection.

Q Did you refuse because you were religiously opposed as a conscientious objector?

A No, I did not.

Q Do you consider yourself to be a conscientious objector on the basis of religious training and belief?

A No, I do not.

Q You requested a Form 150 from your local board by letter which was received by your local board on February 29, 1968. Perhaps it was dated February 25. You did request a Form 150, is that correct?

A Yes, I did.

Q You did not mail back the Form 150, is that correct?

A That is correct, I did not.

Q Why did you not return the Form 150?

[fol. 70] A Because I realized I could not make honestly a claim to conscientious objection to war in any form as it is put on the Form 150, and also because I knew that I could not accept or ask for any—

The COURT. I couldn't hear you. Also because you knew what?

The WITNESS. That I could not ask for or accept any exemption from the Selective Service System.

The COURT. Would you read back that answer?

[The answer is read.]

Q Why could you not accept a deferment or exemption from the Selective Service System?

A Because I believed and I still believe that the system of exemptions and deferments is unequal and discriminates against those who do not have education, for instance, or money, and since, therefore, the burden of service in the armed forces falls unequally and unjustly on the citizens of the United States, and the deferment system is part of this unequal and unjust treatment, I could not accept such deferment.

Q You graduated from Harvard College in June of 1966, is that correct?

A June of 1967.

Q June of 1967. What happened thereafter? What did you do?

[fol. 71] A I entered training for the Peace Corps in July.

Q Until when did your training for the Peace Corps continue?

A Until the end of September.

Q What happened then? Why did it terminate at that time?

A Because the Board of Selection that considers those people who are trained for the Peace Corps deselected me. That is their term.

Q I couldn't hear you. I don't think the jurors can hear you either. Will you speak up?

A Because the Board of Selection in charge of selecting those trainees who are going to serve overseas in the Peace Corps as volunteers deselected me, which means they selected me not to go.

Q Do you know the reason why you were deselected?

A I was told in a general way of the reasons but specifically No because I was not present at the meeting of the Board of Selection.

Q After that, according to the testimony, you went South, is that correct?

A Yes, after a couple of months.

Q And where did you take up employment?

A I was working as a reporter for the Southern Courier, which was based in Montgomery, Alabama. I was reporting from Mississippi, mainly Greenville.

[fol. 72] Q You continued as a reporter on the Southern Courier for how long?

A Until June, 1968.

Q After graduating from Harvard College did you at any time register for graduate school?

A I did register briefly at the Boston Architectural Center.

The COURT. I can hardly hear you. You registered briefly where?

The WITNESS. At the Boston Architectural Center in October, I believe.

Q Did you consider applying for 2-S deferment in connection with your graduate studies?

A I did.

Q What was your decision?

A That I could not ask for or accept the deferment, such a deferment.

Q What were your reasons at that time?

A Largely the same that I stated before, that I felt that I was as qualified as anyone who was having to serve in the armed forces to serve, and that I believed that such exemptions and deferments were not just and, therefore, could not accept.

The COURT. I would like to be a little clearer than [fol. 73] I am as to exactly what you testified to. If I understood you correctly, you said you registered at the Boston Architectural Center in October, 1968, is that correct, or October, 1967?

The WITNESS: October, 1967.

The COURT. And by "registered" do you also mean metriculated in the sense you became a member of the student body?

The WITNESS: Yes, very briefly.

The COURT. When did you cease to be a member?

The WITNESS. About two weeks after that, after I registered.

The COURT. Then, if I understood you correctly, from your own statement you were a student for only two weeks, so that the possibility of being a 2-S student or 2-S person under the draft act existed for only two weeks, is that right?

The WITNESS. That is true, but it existed on purpose for only two weeks. I left school because I knew I couldn't ask for the deferment. That had been my thinking when I applied to the school, that I would request a deferment.

The COURT. I am not cross-examining. I just wanted to find out what the fact was.

[fol. 74] Q Your reason for originally applying for graduate school was the thought that you might be deferred as 2-S?

A Largely, yes.

Q When you determined you could not conscientiously ask for a 2-S deferment you terminated your schooling, is that correct?

A Yes.

Q Why did you refuse to submit to induction?

A I refused induction because I believe the war in Vietnam, that is, the United States war making in Vietnam, to be wrong on every ground by which I could judge it, and to be immoral, and to be illegal and to be unjust and unjustifiable in any way, and because it went against my principles and my best sense of what was right. Therefore, I felt that by accepting induction that even though I might not be sent to Vietnam, I would be consenting to the Government's waging of war in Vietnam, and I believed it my duty not to consent with that action because I did not consent in my own mind.

Q What was the basis for the conclusion you just articulated which prompted you to refuse to submit?

A My continuing knowledge of the nature and the history of our involvement—the United States' involvement in Vietnam, and the conclusions that I and others [fol. 75] —that I either drew myself or that were drawn by others as to the specific question whether the war was legal, whether it was moral, whether it was justified, whether it was in our national interest.

The COURT. The last thing I am trying to do is lead you into any view. I merely want to be sure that I understand what your testimony means. You have used the word "immoral" twice, and you used the word "unjust" once and at an earlier stage in response to a question you stated that you could not claim conscientious objection on the ground of a religious objection or on the ground of religious training and belief.

Now all I want you to do is to explain as clearly as you can what you mean by immoral and unjust.

The WITNESS. Immoral means contrary to my moral values, my ethics.

The COURT. Your personal moral ethics?

The WITNESS. Those that I have myself. Those are the only ones that I have myself.

The COURT. You don't mean contrary to any creed or any formal set of values of a group or any pattern of any philosophical nature; you just mean that they are not in accordance with your personal moral views?

The WITNESS. They can also not be in accordance—
[fol. 76] The COURT. Well, of course they can be lots of things. What I am asking you is what you mean by immoral.

The WITNESS. My moral values come from the same sources that you mentioned, religious writings, philosophical beliefs.

The COURT. I am not suggesting or trying to put words into your mouth. I am quite sure that because of your age and because of your training you are familiar with many doctrines in this area and that you are undoubtedly better informed than most defendants about problems raised in the Seeger and other cases, and I am not raising any new problems for you.

I am merely trying to have you state as precisely as you can, in the light of your superior education, the exact position you take.

The WITNESS. Where would you like me to begin?

The COURT. I would like you to state as exactly as you can what you mean by the use of immoral and what you mean by the use of unjust. Your counsel may explore it further, and so may the Government. I am merely telling you I would like to know what you mean.

The WITNESS. Specifically in relation to Vietnam I mean that one of the moral values I hold is respect for human life. The war in Vietnam, the United States' [fol. 77] participation in that war shows to me the opposite or the lack of that value on the part of the United States. That is one of the specific things of what I mean.

The COURT. I would like the record to show that I am not trying to stop you. You can go on as long as you like.

The WITNESS. Another moral value that I hold is the value of man's freedom, and it appears to me, and it appeared to me then, that the United States' participation or involvement in the war in Vietnam was not in the interest of freedom of either the Vietnamese or of ourselves. Therefore, I felt it to be immoral, our actions.

When I said unjust, I mean the destruction that comes from the United States' involvement in Vietnam, in the

war there, the scale of destruction and killing is not consonant with—it has no justification, it is not justified in terms of which the United States states its purpose. That is, even if you take the United States' explanation for our presence there, which includes something to the effect that we are defending the liberty of the people of South Vietnam, the amount of killing of the people of [fol. 78] South Vietnam, the amount of destruction of the country of South Vietnam seems to me to deny that supposed purpose, and it is unjust because it does not serve that purpose.

Q Have you completed your answer?

A Yes, I have.

Q Now, I believe that in addition to the adjectives which the Court pointed to, namely, immoral and unjust, that you used at least two other adjectives in your original answer. Would you describe the reason why you refused to be inducted, bearing in mind that you have already testified with respect to your belief that the war is immoral and unjust?

A Excuse me. I didn't—

Q Why else did you refuse to submit to induction?

A I stated that other reasons were that the war is illegal and, as I said, unjustified.

Q What do you mean by your statement that the war is illegal?

Mr. SUCHECKI. I object, your Honor.

The COURT. I will allow it but I am going to inform the jury that I will give them instructions with respect to this. He is not now being asked why the war is illegal; he is being asked why he believes the war is illegal.

A Because I have not seen any what appeared to me [fol. 79] to be legitimate, legal grounds for our being there, and I have seen and heard and know of information or knowledge that leads me to believe that we acted either outside of the law or broke the law or treaties to which we were a party in being in Vietnam.

The first and most basic is that the Government that we claim to be supporting is in fact illegal, and our efforts to create and then support that Government, starting in 1954, were contrary to international treaties,

namely, the Geneva Accords, which provided, among other things, that no outside powers would give military assistance—that no outside powers could give military assistance to either section of Vietnam.

The COURT. Is that the end of the examination?

Mr. FLYM. No.

The COURT. I wasn't quite sure. I saw you sit down.

Q Please continue.

A Other aspects of the illegality concern international commitments not to commit aggression, which the United States has violated in its bombing of North Vietnam and even in its presence in South Vietnam.

It seems to me that its presence there from the very beginning, which was 1954, the division of Vietnam into [fol. 80] two parts, the temporary division, has been illegal.

The United States aided a group in the South to not comply with the provisions of the Geneva Accords for an election to determine the Government of all of Vietnam. Those elections were never held. And then by furnishing military aid and arms and advisors to this illegally created government. Also the United States has not, I believe, although it is fighting a war, it has not entered into that conflict according to the laws of this land as set down in the Constitution.

It has largely been an action of the Executive Branch of the Government without the necessary participation of the Legislative Branch. Those are the main points or considerations or the facts that led me to believe the United States' involvement in Vietnam is illegal.

Q You just testified with respect to your point that the war in Vietnam somehow violates the domestic requirements of American law and Constitutional law. You said something about the Executive and the Legislative combining for action. What did you mean by that?

Mr. SUCHECKI. If your Honor please, if counsel wishes to testify—

The COURT. I said he could testify as to his belief [fol. 81] but I certainly will not allow him to testify with respect to the law with respect to this matter or to questions that lie outside the jurisdiction of this Court,

in accordance with an earlier Opinion of mine and familiar to you.

Mr. FLYM. May it please the Court, at no point in time has it been my intent to have the witness, or any other witness, testify about the legality of the war in Vietnam. The questions are solely addressed to the nature of his belief.

The COURT. He has already said he believes the war is illegal because it is not according to the laws of the land as set forth in the Constitution, and it was determined largely in an action or actions of the Executive Branch of the Government without the Legislative Branch.

Have I fairly summarized what you said?

The WITNESS. Yes, sir.

Mr. FLYM. My purpose, your Honor, is simply to inquire into the more particular details of it.

The COURT. You may have more particular details. The question is what is his belief and not what your knowledge is.

Mr. FLYM. Yes, your Honor.

[fol. 82] The COURT. If he has some belief he has not stated, he may tell it.

Is there anything you haven't said that you want to say?

The WITNESS. I have stated my beliefs in general terms. I could enter into more specifics.

The COURT. All right.

Q Well, please do enter into the specifics.

A In connection with what I said last, my understanding of the powers of the United States to make war is that Congress is empowered to declare war. It is also the power of Congress to make appropriations for the military, and my understanding from history, the writing of the Constitution, is that the purpose of empowering or giving Congress those powers and not lodging them in the office of the President, or other Executive Branch, is to make it difficult for the decision to go to war to be made without the most careful considerations, and I believe that in this case, with Congress being left entirely out of the decision making, the decision on which the United States' involvement in Vietnam is based, that

therefore that decision was not made with the greatest consideration, the consideration that it must have, and the framers of the Constitution realized must be taken [fol. 83] when a nation decides to go to war.

I believe it is even more important now than at the time the Constitution was written because the power of the United States to do harm, not only to the country but to the whole world, is that much greater, much greater, and that it cannot be allowed to enter into wars without full consideration and deliberation and the consent of the Congress and the people, which the Congress is supposed to represent.

Q Would you give similar specifics with respect to the other elements to which you have already testified, something about illegality?

A My main knowledge of the illegality of our participation in the war with regard to international law is based on what I understand to be based on the Geneva Accords and the provisions to which we did not sign but which we agreed to which determined the end of the French Indo-China War and the plan for the future political resolution of the problems of Vietnam.

My understanding is that Vietnam was to be divided at the 17th Parallel temporarily in 1954, that elections were to be held within the next two years to elect a government for all of Vietnam, North and South, that in the intervening time no foreign powers were to give [fol. 84] any military aid or build any military bases in either section of Vietnam, and that the neutrality of this area was to be upheld by an international control commission.

I understand to the best of my knowledge that the United States violated—although it agreed to the principles of the Geneva Accords, it violated those principles and specifics by giving military assistance to the government of Diem in the form of advisors and material, and gave Diem also economic assistance to establish a government, a permanent government in South Vietnam that was not according to the Geneva Accords supposed to be established, and that they aided him in his refusal to

allow elections to be held in that part of the country to elect a government for all of Vietnam freely.

Therefore, the United States aided in an illegal way the establishment of an illegal government in South Vietnam and continue to in violation of the Geneva Accords.

Q Have you completed your answer?

A Yes.

Q You earlier referred in your testimony to an international commitment not to commit aggression. Would you give specifics with regard to that part of your testimony?

The COURT. I think you have been adequately in- [fol. 85] dulged. Mr. Suchecki is objecting here because all that could possibly be relevant, as I said before, in a prosecution for willfully refusing to obey an induction order is evidence with respect to belief to the extent it bears upon the issue of intent. Belief is not admissible in order to show motive or good faith, and least of all is it admissible in order to show what the law, national or international, is. I now think Mr. Suchecki's point really deserves to be sustained.

He is now discussing political motive, good faith and other issues, which are not open in a criminal prosecution under this statute, as I ruled in advance.

Mr. FLYM. May it please the Court, we are not offering this testimony with respect to the question of good faith or with respect to the question of motive. We are offering it expressly with respect to the issue in this case of the defendant's intent.

The COURT. Whether he intentionally violated the order?

Mr. FLYM. Yes, your Honor.

The COURT. All right. If you can show anything that relates to that which persuades the jury, that of course is a different question.

Mr. FLYM. That is my sole purpose, your Honor. [fol. 86] None of the testimony which I will request of Mr. Sisson has anything to do with any issue whatsoever except the question of his intent.

The COURT. Don't misuse the word intent. It is intentionally.

Mr. FLYM. Willfully, your Honor.

The COURT. Willfully.

Mr. FLYM. It is with respect to the use of that word that I offer the testimony.

The COURT. It is not specific intent as your request seems to suggest.

Mr. FLYM. Your Honor, may I be heard on the question, perhaps outside the hearing of the jury?

The COURT. Yes, at a later time, surely, unless you want it now.

Q Would you state the sources of the information on which you base your belief, as you have described it.

A They were sources, mainly newspapers, the television, the news on television, magazine articles, some books, sources that anybody could avail himself of. Specifically, I mainly read the *New York Times* and the Boston newspapers, the *Christian Science Monitor*, magazines such as the *New Republic*, *Ramparts*, the *Nation*, and various less formal literature, leaflets, and most importantly dis- [fol. 87] cussions with friends through whom I came in contact with a good deal more than just what I have read. I came in contact with books that I had not read myself but through discussions with friends I learned of their content, such books as Bernard Fall's books, *The Vietnam Reader*, *Vietnam: The Logic of Withdrawal*, by Howard Zinn. The positions of the Committee of Lawyers on Vietnam, and those expressed in Richard Falk's book. I can't recall the specifics.

Q I believe you said that you felt some of your sources were from newspapers?

A Yes.

Q Did you read any one newspaper regularly?

A Yes. I read the *New York Times* daily for a number of years.

Q Approximately what period of time?

A From the time I was in college, 1962 to 1967, and beyond 1967.

Mr. FLYM. Your Honor, if I may be permitted, with due respect for your Honor's earlier ruling on the question I asked the witness, I would like to ask him a similar question but asking for a name. He referred to

international commitments. I would like him to identify what he is referring to.

[fol. 88] The COURT. That much you may have. What commitments did you refer to as the grounds for your belief?

The WITNESS. Commitments to the United Nations about war, commitments that we had under the Southeast Asia Treaty Organization, commitments that we had with the Nuremberg Trial and various Geneva Agreements about the rules of war.

The COURT. Don't you think I have now allowed you all the scope you expected plus some?

Mr. FLYM. Certainly not the scope I hoped for, your Honor. If I may be permitted, your Honor, I would request a hearing on the question.

The COURT. The jury is excused until 2:15. Please. This is a courtroom. The argument you want to make you had better make at the bench because it must not reach the jury directly or indirectly.

I am not trying to evacuate the courtroom but you are not going to hear anything, ladies and gentlemen.

[Conference at the bench between Court and counsel as follows:

The COURT. What is it you want to say?

Mr. FLYM. May it please the Court, I had considered this question—

The COURT. There is to be no conversation in this [fol. 89] courtroom under any circumstances, ladies and gentlemen. If I find it necessary to administer the order by authority vested in me I shall.

Mr. FLYM. May it please the Court, what I have to say is based substantially on conversations with Profs. Sacks, Dershowitz, Freund, and Prof. Mansfield will be here at two this afternoon to join in the defendant's case. I indicate this only because the particular issue is so critical. It is the defendant's defense in reality, and I will do my best to present the position. I beg your Honor's indulgence with respect to the argument.

The COURT. If you want Mr. Mansfield to make the argument I will wait until then. If you want to make

it yourself, you may make it yourself, but you cannot under the patronage of people not here either in their person or in their writings very well say what they would have said.

Mr. FLYM. That is correct, your Honor. What I would request is permission to make the argument and supplement it ever so briefly with any suggestion which Prof. Mansfield might make.

The COURT. Don't you want him to hear what you say?

Mr. FLYM. I would prefer that, your Honor.

[fol. 90] The COURT. All right. I will hear you at two o'clock, or shortly thereafter.

[Recess.]

[fol. 91] AFTERNOON SESSION

2:00 p.m.

[Conference at the bench between Court and counsel as follows:

The COURT. Mr. Mansfield is allowed to participate. I don't know whether he is a member of the bar of this Court.

Mr. FLYM. He is not.

The COURT. Who wishes to speak first?

Mr. FLYM. I will, your Honor. It appears to be clear that if Congress had in fact written a statute which included as a defense to be raised by someone charged with refusal to step forward, if he reasonably believed the war to be illegal that would be a defense, and this Court would have jurisdiction and would have the duty to apply that defense. It is not a question of jurisdiction or power.

The question, at least at the threshold, is whether Congress in fact did this when it employed the word willfully in connection with this statute. The word willfully has been used and interpreted by the Supreme Court in four, possibly five cases spanning roughly 80 years, beginning with the Felton case, which I believe was decided in 1874

[fol. 92] or thereabouts. There were subsequent cases in the 1890's.

There was the Spruce case and the Murdock case. The word willfully as interpreted by the court has been held to mean a specific intent, bad purpose, evil intent. Intent to do wrong is implicit in the statute through the use of that word. In the Murdock case the question was one of reasonable belief whether the defendant was required to answer certain questions. The logical parallel in this case would be a question of the reasonable belief of this defendant about submitting to induction. We would offer evidence that his belief is a belief which would be held by reasonable men that the war is illegal on a variety of grounds.

The question of intent, of course, is a highly complex one, including many components. Certainly, on the basis of the defendant's testimony, one component includes his belief that the Nuremberg principles are applicable to his situation, to his order to report for induction.

The question, insofar as his defense is concerned, is whether he was reasonable in believing that the Nuremberg principles applied to him and required that he refuse to submit to induction. I think this is one branch with respect to the difference between the Murdock case [fol. 93] and this case.

Mr. MANSFIELD. It might be helpful to remind the Court that in the Screws case willfully was interpreted to require this specific intent directed to the question of the wrongfulness or unlawfulness of the conduct to avoid what the court considered difficult problems of vagueness and also the background problems of Federalists. It might be thought that this case offers something of a parallel, that whereas other things being equal one might not construe willfulness as suggested by the defendant, in this case were Constitutional difficulties in the background relating to the question of selective conscientious objectors, it might be permissible to interpret willfulness in a way suggested in the Screws case and Murdock case. I would like to emphasize to the Court the slight difference between this case and the Murdock case. In the Murdock case the defendant had failed to disclose cer-

tain information relating to his Internal Revenue situation. The court concluded that his refusal was a reasonable refusal. Notwithstanding the court's subsequent ruling, the privilege did not apply in that case.

In this case it is a little more complicated because the [fol. 94] question of the reasonableness of the defendant's refusal to be inducted or to submit to induction is tied into the question of his belief about the illegality of the war.

Nevertheless, it seems that looking at the question of his reasonable belief as a unified question, there is a close relationship between his belief and the illegality of the war and his belief that he was entitled to or under a duty not to submit to induction.

I should like to make one final point. If evidence is offered on the question of opinions as to the legality of the war one might well ask, "What is the relevance of this evidence to the precise question of the belief or the reasonable belief of the defendant that he was under a duty or had a right not to submit to induction?"

It is relevant, I submit, because the question is not merely the internal workings of the defendant's mind, whether they comport with some notion of rationality, but whether or not by some objective standard a reasonable position on the question of the war would be that it was illegal.

In other words, the defendant is entitled, as he would be in any negligence case, to the benefit of that standard without necessarily an inquiry into the actual substantive [fol. 95] workings of his mind.

The COURT. Would you tell me for what purpose I am treated to this colloquy?

Mr. FLYM. Yes, your Honor. The questions I would request leave to ask of the defendant would bring out the nature of the facts which underlie his belief. We would subsequently offer evidence which would place them in context for the jury so the jury would have a basis for making an intelligent determination as to the nature of that belief.

The COURT. I have given you the opportunity to make the statement. When I am required to make a ruling I will.

Bring the jury down.

[End of conference at the bench.]

[The jury enters the courtroom at 2:25 p.m.]

JOHN HEFFRON SISSON, JR., Resumed

Direct Examination

Q [By Mr. Flym] Mr. Sisson, in your testimony this morning you referred to a variety of international agreements, including the so-called Nuremberg Charter. Would you describe or tell the Court and jury what part your belief with respect to the Nuremberg principles had in [fol. 96] your decision to refuse to submit to induction?

Mr. SUCHECKI. Objection, your Honor.

The COURT. Overruled.

A The Nuremberg principles influenced me in my decision in two areas. First, they specifically charged men with the duty to act out of their own conscience, not only in relation to what they were ordered by authorities or authorities through the law to do; it specifically came out of World War II, part of the tribunal that was punishing war criminals, mainly German war criminals, and in response to the defense by various members of the German Army and the Gestapo and other parts of the German Armed Forces, which were responsible for what were believed to be war crimes, such as the extermination of the Jews, the attempted extermination of the Jews, the court or the tribunal said that the defense that one was ordered to commit a crime by his superior officer or superior authorities was not a defense, a legitimate defense, because one has the duty to act out of conscience as well as out of obedience to the law.

Specifically with regard to myself, I saw a very clear parallel; although I was ordered by my Government, the Selective Service Branch, which is part of the Govern-

[fol. 97] ment, to be inducted into the armed forces I had to consider for what purpose I was being inducted and what ends my induction were serving.

Those ends and those purposes were largely the continued waging of the war in Vietnam, which I considered to be a crime, and also which I considered to be against my best principles, namely, that I would not go to a country such as Vietnam or anywhere to kill or to contribute to the killing of people for no reason that was just to myself just because some higher authority told me that these people must be killed.

I felt that if in my conscience I could not kill or contribute to the killing of these people that I must refrain from doing so even if it meant violating the law on order from my Government or superior authorities in the Government.

There was another part of the Nuremberg principles which influenced me, which speak of war crimes and crimes against humanity, and specifically list certain acts of war which are held by the tribunal to be crimes.

These include massive bombing of civilian populations, the use of gas and chemical warfare. There are principles as to how war is to be conducted and also how a war is to be legitimately entered into. The purpose [fol. 98] of these principles is to avoid or to make unlawful actions of countries at war which are regarded to be evil and to, therefore, protect us all from perpetrating evils and crimes on our fellow man.

I believe that the United States has violated some of the principles of the Nuremberg Tribunal through its conduct of the war in Vietnam. The most obvious is the destruction of the civilian population, but there were others, such as the use of certain weapons and forms of warfare. These are the other parts of the Nuremberg principles that influenced me in my decision to refuse induction.

Mr. FLYM. Your witness.

The COURT. Is there any cross-examination?

Mr. SUCHECKI. Yes, sir.

Cross-Examination

Q [By Mr. Suchecki] Mr. Sisson, do you remember getting the order to go to the induction center?

A Yes, I do.

Q Did you refuse to comply with that order?

A No, I did not. That is, I did report to the induction center.

Q Once you got to the induction center did you submit [fol. 99] to induction?

A No, I did not.

Q Did you do this inadvertantly?

A No, I did not.

Q Did you do this freely? Was it your own free will to do this?

A Insofar as one has free will, yes.

Q Something of your own free choice?

A It was my own choice.

Q You did it deliberately? You deliberated your decision?

A Yes, I did.

Q You knew the penalties for non-compliance?

A Yes, I did.

Q Did you apply for any appeal from any of your classifications by the local board?

A No, I did not.

Q Now you were classified on October 6 of 1964 as 2-S, is that correct?

A Yes.

Q Did you accept that classification?

A I did.

Q You were classified 2-S on October 11, 1965, is that correct?

A Yes.

[fol. 100] Q Did you accept that classification?

A Yes, I did.

Q Again on November 7, 1966 you were also classified 2-S, is that correct?

A Yes.

Q Did you accept that classification?

A I did.

Q On June 19, 1967 you were classified 2-A, is that correct?

A Yes, it is.

Q Did you appeal that classification?

A Did I appeal or did I accept it?

Q Did you do anything at all in response to it? You accepted it, did you?

A Yes, I did.

Q On November 20, 1967 you were classified 1-A?

A Yes, sir.

Q Did you appeal that classification, sir?

A No, I did not.

Mr. SUCHECKI. No further questions.

Mr. FLYM. No further questions.

The COURT. You are to return to your seat. Next witness.

[fol. 101] RICHARD FALK, Sworn

Direct Examination by Mr. Flym

Q Will you please state your name and address?

A Richard Falk, 401 Marlowe St., Palo Alto, California.

That is a temporary address. My permanent address is 35 Clover Lane, Princeton, New Jersey.

Q What is your occupation?

A I am a Professor of International Law at Princeton, University.

Q What is your training in law?

A I attended Yale Law School and completed my LL.B. in 1955 and then was admitted to the bar in the City of New York shortly thereafter. I taught at Ohio State Law School for a period of years and then I returned to become a student at Harvard Law School and received a J.S.D. degree in 1961, I believe.

Q After 1961 what was your occupation?

A I have been a Professor at Princeton since that time.

Q What department at Princeton?

A In the Woodrow Wilson School of Public and International Affairs and in the Department of Politics. I

have also been affiliated with the Center of International Studies at Princeton.

Q Do you have the title of Professor of International [fol. 102] Law at Princeton?

A Yes. There is an endowed Chair, the Albert G. Milbank Chair of International Law and Practice that I hold.

Q Will you please tell the Court and Jury your professional affiliations and activities?

A Well, the main professional affiliations that are important, I suppose, are that I have served on the International Law Committee of the City Bar Association of New York and I have been Chairman of the Vietnam Subcommittee of that Committee. I have been an active member of the the American Society of International Law, which is the basic professional association, and in that role have served on the executive council of the society, and have also been acting as the Chairman of the Civil War Panel, which has engaged in a series of studies of the relevance of international law to civil war problems and has been concerned with the problems of Vietnam.

On that panel are the leading international lawyers in the United States who are concerned with the Vietnam war and who represent the major positions that have been taken in relation to the war by international lawyers. I have also acted as an editor of the American Journal of International Law and served as co-editor of [fol. 103] World Politics, which is a quarterly international journal.

In addition, I have acted as Chairman of the Consultative Council of the American Lawyers Committee on Policy Towards Vietnam, and in my role as Chairman have constituted a council that includes a series of international lawyers who teach at the leading universities in the United States.

Would you like me to name the membership of the Consultative Council?

Q Yes.

A Hans Morgenthau of the University of Chicago; Stanley Hoffman, Harvard University; Quincy Wright,

University of Chicago and later University of Virginia; John Herz, City University of New York; Wolfgang Friedmann, Columbia Law School; Burns Weston, Iowa Law School; Lawrence Velve, Kansas Law School; Saul Mendlovitz, Rutgers Law School; Richard Barnet, the co-director of the Institute for Policy Studies in Washington. I think that is the membership of the Consultative Council. Also John Fried of the City University of New York. The work of this Consultative Council consisted principally in preparing an extended legal analysis of the main problems of international law presented by the [fol. 104] American involvement in Vietnam, and it was intended in part to enlighten the public and community-at-large as to the legal dimensions of the American involvement in Vietnam and to that end sought to distribute the conclusions of its analysis partly through the publication of a book that has been distributed in the United States and has been translated into foreign languages and partly through shorter summaries of its argument being presented to the public in the form of long paid newspaper advertisements. Press conferences have been held at various times; also meetings between the head of the Lawyers Committee and officials of the United States government have been held at different times in an effort to communicate the conclusions of the Consultative Council to the United States government.

Let me just add one thing to the work of the Civil War Panel. It published through Princeton University Press a volume entitled *The Vietnam War and International Law* which contains most of the writing that has been done in law journals and professional journals on both sides of the legal question, and I served as editor of that in part as a consequence of my being Chairman [fol. 105] of the Civil War Panel of the American Society of International Law.

Q Have you had any consulting relationships?

A I have in the past had some consulting relationships, yes.

Q Have you had a consulting relationship from 1962 to roughly the present?

A I suppose you are referring to the World Law Fund?

Q That is my question yes.

A Yes. I have acted in that relationship. That is a small foundation that is concerned with general problems of world order and the relevance of law to international society.

Q Would you name the books which you have authored or co-authored?

A I will try. *The Role of Domestic Court in the International Legal Order, Law, War and Morality in the Contemporary World, Legal Order in a Violent World.* I co-edited a 4-volume series entitled *The Strategy of World Order*, and I co-edited a book called *Security Through Disarmament.*

In addition to the books I have mentioned previously, the two books on Vietnam, *Vietnam and International Law* and *The Vietnam War and International Law*—I [fol. 106] think those are the principal books that I have been concerned with—I also wrote two articles in the Yale Law Journal concerning the legal aspects of the American involvement in Vietnam. The Yale Law Journal published the State Department Memorandum in defense of the United State's involvement in Vietnam, and the editors of the Yale Law Journal invited me and two other people to comment on that Memorandum, and that led to a series of articles which then elicited some responses, and I again responded to the responses and that consisted of the second article.

Q Have you written chapters which were published in books with respect to international law?

A Yes, quite a number.

Q Without naming them could you estimate the approximate number?

A About 10.

Q Again can you estimate the approximate number of articles you have written about international law?

A 25 or so.

Q How many of those 25 were specifically directed at the Vietnam conflict?

A 5 or 6.

Q You referred to a Consultative Council of which [fol. 107] you are a member. Does that Consultative Council include so-called experts with respect to the war in Vietnam, representing both points of view, that is the point of view that the war is legal as well as the point of view that the war is not legal?

A The Consultative Council includes only people who regard the American involvement in Vietnam as illegal. The Civil War Panel to which I referred earlier includes people who take both positions.

Q Is the Consultative Council the same body as the Lawyers Committee to which you referred?

A No. The Consultative Council is a group of academic experts on the legal problems posed by the Vietnam war. The Lawyers Committee as a whole is a citizens group constituted by lawyers concerned about the American involvement in Vietnam. The Consultative Council has worked fairly closely with the Lawyers Committee but it has really retained independence in terms of the work it has done, such as the preparation of this book that I have referred to.

Q Is the Consultative Council a consultative council of the Lawyers Committee or are they independent?

A They are independent in the sense that we have operated on the basis of our own sense of what would [fol. 108] contribute to a clarafication of the legal issues. We never defined formally the relationship between the Consultative Council and the over-all Lawyers Committee.

Q Did you indicate or did you testify that the puroose of the Lawyers Committee as well as of the Consultative Council was to inform public opinion with respect to Vietnam and the legality of the Vietnam war?

A Yes, the legal implications of American policy in Vietnam.

Q That was the purpose of both the Lawyers Committee and the Consultative Council?

A Yes.

Q You have referred to a book by the name of *Vietnam and International Law*. Is this the book (indicating)?

A It is.

Mr. FLYM. May this be marked for identification?

The COURT. It may be marked for identification. Exhibit B for Identification.

[Book entitled Vietnam and International Law marked Defendant's Exhibit B for Identification.]

Q Would you describe your participation in the work which went into writing this book and having it pub-
[fol. 109] lished?

A Well—

Mr. SUCHECKI. Objection, your Honor.

The COURT. I think that the ground has been covered sufficiently in general. I think now it is about time for you to find out exactly how far I am prepared to go in connection with the proffer you made in the most general terms when you were at the bench.

Q With respect to the purpose to which you have testified of the Consultative Council, was any portion of this book published in some form other than this book?

A Yes. The major arguments of the book were reproduced in a shorter pamphlet that was introduced into the Congressional Record several times and a shorter summary than that was reproduced as a full-page advertisement in the New York Times. In addition, there were several news stories and magazine articles about the work of the Lawyers Committee and specifically the Consultative Council.

Q Do you recall approximately when it is that the full-page ad in the New York Times appeared?

A I think the principal ad in the New York Times
[fol. 110] appeared in 1967.

Q Do you recall what time of the year in 1967?

A I think late Spring.

Q Do you recall the substance of what was published in the New York Times?

Mr. SUCHECKI. Objection, your Honor.

The COURT. Well, I take it that the object of this line of testimony is to show that the views exposed by Professor Falk appearing in the New York Times would

in all probability have reached the defendant as a regular reader of the New York Times. Is that the object?

Mr. FLYM. Yes, your Honor.

The COURT. Well, if the Jury wants to draw that inference they have enough on which to draw it now without the text of the particular advertisement.

Mr. FLYM. Your Honor, I believe a portion of this book sets out the language verbatim of what was in fact published.

The COURT. That may be true, but there is nothing to show on the present state of the record that the defendant read that specific language. He has merely said [fol. 111] that he read the Times regularly, and many regular readers of the Times would hardly say they read all the advertisements.

Q Do you recall whether this advertisement appeared on a week day or on a weekend?

A It was published in the fourth section of the Sunday Times.

The COURT. There is nothing so far to show that the defendant was a diligent reader of advertisements in part 4 of the New York Times.

Mr. FLYM. Your Honor, the defendant—

The COURT. There are many advertisements, some full-page and some shorter, which some read and other don't.

Mr. FLYM. Your Honor, I believe the defendant explicitly testified that as sources of his belief he referred to the work of the Lawyers Committee, on the one hand, and to Professor Falk's book.

The COURT. If he has read it and that be germane he is the man to say it and not you. That is to say, if he has already said it, the Jury may believe it. He certainly wasn't shown any particular document and asked whether he had read that. Don't you think you had [fol. 112] better come to the point which you discussed at the bench 40 minutes ago?

Mr. FLYM. Yes. I offer this book in evidence, your Honor, as showing the reasonableness of the belief held by the defendant with respect to the legality of the war in Vietnam, not on the question of legality as such.

I believe the defendant has testified with respect to the basis for his belief, that this book is an accurate representation of the kinds of sources of information which he relied upon in forming his belief.

Mr. SUCHECKI. Objection, your Honor.

The COURT. The objection is overruled. The jury is reminded that the document was not offered to show that the Vietnam war was unlawful but merely to show that reasonable people might reasonably believe it was unlawful.

Mr. FLYM. No further questions.

The COURT. Is there any cross examination?

Mr. SUCHECKI. No, sir.

The COURT. You are excused. Is there any other evidence for the defendant?

Mr. FLYM. Yes, your Honor. We have three more [fol. 113] witnesses.

The COURT. If this is another expert on reasonableness, it would be reasonable to be briefer with respect to the expertness.

Mr. FLYM. Your Honor, if his expertise will be stipulated to by counsel—

The COURT. Let us hear it in general but not with the great detail we heard it with the last witness.

[fol. 114] HOWARD ZINN, Sworn

Direct Examination

Q [By Mr. Flym] Will you please state your name and address?

A Howard Zinn, 24 Joy Street, Newton.

Q What is your occupation, Mr. Zinn?

A Professor of Government, Boston University.

Q What is your educational background?

A My undergraduate work was at New York University, my M.A. in History and Political Science was at Columbia University and my Doctorate in History and Political Science was at Columbia University and I had post-doctoral work at the Center for East Asian Studies, Harvard University.

Q Would you name the books you have written?

A *LaGuardia in Congress, SNCC: The New Abolitionists, The Southern Mystique, New Deal Thought,* which I edited.

The COURT. I suppose you really mean to ask questions which relate to this particular subject, the American involvement in Vietnam, is that right?

Mr. FLYM. Yes, your Honor.

The COURT. We don't care about your general expertness in other fields at this particular time.

[fol. 115] A The last two books, I suppose, are more specifically with regard to Vietnam, *Vietnam: The Logic of Withdrawal,* and the other is called *Disobedience and Democracy.*

Q Is this the book you have referred to, *Vietnam: The Logic of Withdrawal*?

A Yes.

Mr. FLYM. May this be marked for identification, your Honor?

The COURT. Yes, Exhibit C for identification.

[*Vietnam: The Logic of Withdrawal* marked Defendant's Exhibit C for identification.]

Q Would you describe the work which you did with respect to this book, the writing and publishing of this book?

The COURT: Were you an author of part of it?

The WITNESS. Excuse me?

The COURT. Were you an author of part of it?

The WITNESS. I'm sorry but—

The COURT. Were you an author of part or all of the book?

The WITNESS. Yes, I was the author of all of the book.

The COURT. Well, isn't that sufficient?

Mr. FLYM. Yes, your Honor. It is sufficient for the purpose of establishing that he wrote it, your Honor. [fol. 116] It does not really afford anyone a basis for concluding that he did anything before he wrote it.

The COURT. All right.

Mr. FLYM. He might have been up in his attic.

The COURT. On what basis did you write what you wrote?

The WITNESS. I was up in the attic for a while but I also did a good deal of research. I read the standard histories of Vietnam, the American policy in the Far East. I read articles in scholarly journals and kept a clipping file of newspapers and read Government documents and went through the Senate Hearings on Vietnam.

The COURT. In short you relied on hearsay? You were not in Vietnam and you have not been a party to any negotiation of any treaty, is that right?

The WITNESS. I have been a party to negotiations.

The COURT. Have you been in Vietnam?

The WITNESS. I have been in Vietnam.

The COURT. How recently?

The WITNESS. That was about one year ago.

The COURT. In connection with any military or like operation?

The WITNESS. Yes.

[fol. 117] The COURT. Before you wrote the book?

The WITNESS. No. This was after I wrote the book.

The COURT. The materials upon which the book was based were hearsay of a scholarly research nature, is that correct?

The WITNESS. Yes. The book was based on research.

The COURT. Of a hearsay nature, is that correct?

The WITNESS. If by hearsay—

The COURT. Hearsay means not based upon personal observation of the events ultimately involved.

The WITNESS. It was not based on personal observation of events in Vietnam, that is true.

The COURT. I think I understand his qualifications, and I have no doubt that on the same basis as I admitted Exhibit B I am going to admit Exhibit C, and I have no doubt the Government is going to object.

Mr. SUCHECKI. Yes.

The COURT. And I have no doubt I am going to caution the jury in the same terms I did the last time. Now if you want to go through any further detail, that is up to you.

Mr. FLYM. Only a few brief questions, if your Honor [fol. 118] please.

Q Have you ever been invited by the University of Indiana to speak?

A Yes.

Q How recently were you invited?

A About last spring of 1968.

Q What were the circumstances?

A Dean Rusk appeared at the University.

The COURT. I don't assume you were invited by Dean Rusk, were you?

The WITNESS. No.

The COURT. Well, it is exactly as I did not invite him here. He is here in my presence and I neither endorse him nor reject him, and I don't assume that Dean Rusk did either in Indiana. He happened to be in the same room for good reason. That's all.

Mr. FLYM. One final line of questioning which may mean one question, your Honor.

Q What efforts have you made to publicize your conclusion with respect to—well, as set forth in your book?

Mr. SUCHECKI. Objection, your Honor. It is irrelevant.

The COURT. I will allow him to answer whether or not you did put it into the *New York Times* in capsule or [fol. 119] other form.

The WITNESS. I have tried in various ways, yes, speaking and writing.

The COURT. Through letters and otherwise to the *New York Times*?

The WITNESS. Excuse me?

The COURT. Through letters and otherwise to the *New York Times*?

The WITNESS. No, specifically not through letters of mine to the *New York Times*.

The COURT. Through advertisements?

The WITNESS. I have signed advertisements.

The COURT. Well, if the jury thinks that is enough, that is up to the jury.

Q Have you given any talks about your views?

A Yes, I have.

Q At colleges and universities?

The COURT. Well, just a moment. That has no bearing unless you can show the defendant himself in some way was informed and present or informed and absent.

Mr. FLYM. Your Honor, I believe the defendant expressly referred to Mr. Zinn in his testimony.

The COURT. That has already been covered. Mr. Zinn cannot add to that. The question is whether the [fol. 120] defendant knew Mr. Zinn, not whether Mr. Zinn knew the defendant.

Mr. FLYM. Yes, your Honor. Based on your Honor's prior ruling, I take it that Mr. Zinn's book is in evidence?

The COURT. The Government objects to the admission of Exhibit C for identification.

Mr. SUCHECKI. Yes.

The COURT. For the same reason as before?

Mr. SUCHECKI. Yes.

The COURT. And the exhibit is admitted for the limited purpose of showing that reasonable men may have the view which the defendant has, that it is unreasonable for us to be involved in the Vietnam War and contrary to law, international and domestic, unjust and immoral. This does not mean that the war is any of those things. It merely means that reasonable people may be found by the jury to hold that view.

Mr. FLYM. Yes, your Honor. No more questions.

Mr. SUCHECKI. No questions, Your Honor.

Mr. FLYM. Mr. Burns.

FRANCIS P. BURNS, Sworn

Direct Examination

Q [By Mr. Flym] Would you please state your name [fol. 121] and address?

A Francis P. Burns, 305 Broadway, Cambridge.

Q What is your occupation, Mr. Burns?

A Election Commissioner, City of Cambridge.

Q Are you the custodian of the records with respect to the Elections Commission in Cambridge?

A That is correct.

Q Do you have records with respect to a refernedum which was posed to the voters of the City of Cambridge in 1967?

A I have the record the summons required me to bring along with a copy of the ballot.

Q May I see a copy of the ballot used with respect to that referendum question?

A Yes, sir.

Mr. FLYM. May this be marked for identification, your Honor?

The COURT. It may be marked for identification only.

[Specimen Ballot, Initiative Petition, Official Ballot, Cambridge, November 7, 1967, marked Defendant's Exhibit D for identification.]

Mr. FLYM. May I inquire about the results of the election?

[fol. 122] The COURT. No, you may not over objection. There being objection, you may not.

Mr. FLYM. May I make an offer of proof, your Honor?

The COURT. You may make a statement in the form of an offer of proof at the bench but not in front of the jury.

[Conference at the bench between Court and counsel as follows:

Mr. FLYM. Your Honor, we would offer to show that 39 per cent of the voters of the City of Cambridge voted in favor of this.

Mr. SUCHECKI. Objection.

The COURT. Well, the offer of proof is noted. The proof is declined.

[End of conference at the bench.]

Mr. FLYM. No further questions.

The COURT. Is there any cross-examination?

Mr. SUCHECKI. No, sir.

The COURT. You are excused, Mr. Burns. Is there any other testimony for the defendant?

Mr. FLYM. One more witness, Your Honor.

[fol. 123] CHARLES STYRON, Sworn

Direct Examination

Q [By Mr. Flym] Will you please state your name and address?

A Charles Styron.

The COURT. I did not get the last name.

The WITNESS. Styron, S-t-y-r-o-n. I live on Bedford Road, Lincoln.

Q What is your occupation?

A I am Minister of the First Parish Church.

The COURT. Are you properly addressed as Dr. Styron?

The WITNESS. Mister is sufficient, sir.

Q Do you know the defendant John Sisson?

A Yes, I do.

Q How long have you known him?

A Almost all of his life. All of the time he has been a resident of Lincoln. I have been a resident for 33 years, so essentially all of his life.

Q Do you know his reputation for truth and veracity?

A Yes, I do.

Q What is that reputation?

A It is excellent. He is known—

[fol. 124] The COURT. That is sufficient. You can testify only as to his reputation, and you have said it is excellent, which I suppose, is comprehensive.

Mr. FLYM. No further questions.

The COURT. Is there any cross-examination?

Mr. SUCHECKI. No, sir.

Mr. FLYM. That completes that defendant's presentation.

The COURT. Is there any rebuttal?

Mr. SUCHECKI. No, sir.

The COURT. I will give you a five minutes' recess and then you will address the jury.

Mr. FLYM. Your Honor—

The COURT. The jury is excused.

[The jury leaves the courtroom at 3:10 p.m.]

[Conference at the bench between Court and counsel as follows:

Mr. FLYM. Your Honor, I move for a directed verdict of acquittal.

The COURT. Denied. I will allow you to make the limited argument that you suggested at the bench when you were here with Mr. Mansfield. I do not intend to allow you to go beyond that. I think it is reasonable that you should be allowed to make that argument to the [fol. 125] jury. I will define willfully as I indicated in several previous memorandua and in accordance with what I understand to be the unanimous opinion of all the courts before which this question has been drawn in connection with this particular statute. The cases are legion. It is unnecessary to cite them. They exist in this District and outside this District and throughout the country as a whole.

Mr. FLYM. Yes, your Honor. Your Honor, I would raise a question with respect to our last request for instructions.

The COURT. Do you mean the jury has the freedom to act contrary to law? If you tell them that I shall rap you over the knuckles.

Mr. FLYM. I don't mean that at all. I mean something much more limited.

The COURT. What is that?

Mr. FLYM. Simply that they are ultimately responsible for the duty to convict or acquit.

The COURT. I will tell you that the way you just said it sounds all right. The way it was embraced [illegible] other ideas in written form was not all right, and I think that you and I both know that the line is close, and we shall both be aware when you go over it.

[fol. 126] Mr. FLYM. If I am aware of it, I certainly won't go over it.

[End of conference at the bench.]

[Recess.]

3:25 p.m.

The COURT. You may proceed on behalf of the defendant.

Mr. FLYM. Ladies and gentlemen of the jury, this case has obviously been a very short one. It commenced

about ten o'clock this morning. Five and a half hours have elapsed, including a break for lunch, so it has taken probably no more than four hours, including conferences with the Court, a number of witnesses being called, and the evidence was simple. I don't think there are very serious questions of fact as such, although you are the judges of the facts, and it is your province to acquit or to convict the defendant.

The role of counsel in these cases is to present the evidence from the witnesses, and that has been done. The role of the Court is to guide the proceedings and to instruct you as to what the law is, and you apply the facts and the law and decide whether to convict or to acquit the defendant.

What are the issues of fact? There is one issue of [fol. 127] fact. He refused to submit to induction. He said so. He is not denying it. He didn't run away when he was ordered to report for induction. He went to the military base. He did everything that he was told to do, and he refused to step forward when he was told to step forward.

You heard the testimony of Lt. Godin, who said, "I warned him about the consequences but he persisted. I told him he would be indicted, that he would be prosecuted and that he would probably be found guilty, but he refused to step forward."

What is the question of fact then that remains under the instructions that will be given to you by the Court? The question of fact revolves about the requirement that the defendant acted willfully in refusing to submit to induction. What does it mean to act willfully? The Court will instruct you. Nothing that I say is evidence. Nothing that I say can be taken as the law with respect to this case. But what does willfully mean with respect to a statute that reaches out to someone who is down in Mississippi as a reporter on the Southern Courier, who graduated from Harvard College, who considered going to graduate school but then quit, according to his testimony, because he didn't want to be deferred as a 2-S. [fol. 128] He didn't want to cop out.

You heard the testimony of the defendant, and he said, "The system of Selective Service is fundamentally

unfair. I am not going to participate in that system. I am not going to be one of the ones who gets deferred as a graduate student while the people who are less privileged, the poor, the disadvantaged, they go off to Vietnam" but he doesn't.

He chose to quit graduate school. As a matter of fact, prior to that point in time he trained for the Peace Corps and that terminated.

Subsequently, he requested a Form 150 to file a formal claim as a conscientious objector. On the basis of conscience he opposeed the war and the war effort and he got the form, and the form said, "Do you oppose war in any form on the basis of your religious training and belief?" He got this form and he struggled with it and he couldn't answer that question, so he didn't send it back. Filling out a form is a simple matter. We do it all the time. For somebody who wants to stall the process of induction, it just isn't very difficult to somehow articulate some concept you pick up in one of these—well, you have groups and they counsel people. He could have filled out the form probably, mouth something, have the local board consider [fol. 129] his claim and mark time on the basis that he has a conscientious objection which is based on religious training and belief, but he didn't do that, and so he was classified 1-A.

He was ordered to report for induction, and he refused to step forward. Did he do it willfully? The definition of terms such as willful, such as intent, is a highly complex question. What does it mean? You don't need to be a college graduate or a PhD in philosophy or a psychoanalyst to know that the question, "Did you intend to do such-and-such?" is not easily answered. Does the question, "Did you intend?" mean that that is the only thing you had in mind? Does it mean that somehow you had a cup of coffee in the morning and it upset your stomach and therefore you refused to step forward?

Does it mean you had a fight with your parents? Does it mean you're sorry because you lost a buddy in Vietnam?

What does the question of intent mean? What does the word willfully mean, as the Court will instruct you?

Let us turn the question around and focus at what hap-

pened about the 30 years ago in another country, in Germany, when a government, on the basis of appearances, lawfully constituted, ordered its people, its young people, [fol. 130] to serve in the military and to prosecute a war, and ordered them to do. "You will fight this war. You will march into Poland. You will march into France and into Great Britian and into Russia."

They were ordered to fight. Is the better man the fellow who submitted to constituted authority in Germany back 30 years ago, or is it the man who through his conscience took the trouble to look at the facts and to come to his own conscientious decision and refused to participate in the system?

I think the question with respect to that question is a rhetorical one. It doesn't take much conscience to decide that the systematic elimination of 6 million Jews is something so horrible that a man ought not obey an order that he participate in that kind of a conflict.

What about the Vietnam conflict? Are we systematically eliminating 6 million Jews? No, obviously we are not. Are we doing something which can be reasonably thought to be illegal and objectionable?

You had two expert witnesses, Prof. Zinn and Prof. Falk. Prof. Falk's life is dedicated to the question of international law. Bear in mind his testimony and Prof. Zinn's testimony is not with respect to whether the war in Vietnam is illegal. That is not the issue before you. [fol. 131] That is not the basis of the defense.

The question is whether reasonable men, a man in Germany 30 years ago, a man in the United States today, doing everything that he can to conscientiously function as a citizen in society should inform himself not necessarily by going to law school or by consulting a lawyer, but by reading the newspapers, by reading what books he can get his hands on, maybe these two books [Indicating].

Just read the Table of Contents, particularly of "Vietnam and International Law." Read the captions and see if you can conclude anything other than that a reasonable man could indeed hold the view that the war is illegal.

Well, assuming that that is true, assuming a reasonable man functioning in this society—of course, we have

freedom of the press and freedom of speech. What does freedom of the press mean? What does freedom of speech mean? Do they mean anything if they don't mean a man is entitled to listen and to read and to come to his own judgment, to make his own conclusions? What point is there to having these books published and newspapers and freedom of the press, people speaking, what point is there to it if a man can't listen and be persuaded?

[fol. 132] These books, I submit, establish beyond any doubt that a reasonable man could hold the view that the Vietnam War is illegal. What does that have to do with this defendant? This defendant testified that the reason he refused to step forward is because he considered the war to be an aberration, the Vietnam War. He considered it on a par—he didn't say so, you can come to your conclusion on the basis of what he said, but essentially he put it on a par with what the Nazis were doing 30 years ago. He said, "I can't take any part in this."

These books establish that that is not an unreasonable belief. Take a man in that situation. He testified he has no criminal record of any sort. He goes to some school, grows up in Lincoln, goes off to college, gets an 2-S deferment. That's routine. And then he is suddenly confronted with this. He reaches a certain age and the Government reaches out and plucks him and says, "We want you," and he suddenly is faced with a crisis of conscience. He is faced with a decision, with the necessity of making up his own mind as to what kind of a war it is that we are fighting in Vietnam.

So he informs himself, and he reaches the conclusion that the war is a bad war. He can't participate. He goes down to the Army Base. The Lieutenant says, "Step [fol. 133] forward." He says, "I can't do it." The Lieutenant says, "Step forward" to nine people on that day, and maybe 48,000 in a month all over the country. Two hundred and sixty-four members of the defendant's local board were classified in a period of three hours. That is one of the exhibits, the first exhibit for the defendant. Two hundred and sixty-four people were considered by the local board.

The local board is made up of a few laymen. They do their best. They have their job to do. They have to provide manpower. They have got 264 names. We have 11 pages of them. They consider these 264 names. Three hours elapses. They don't tell these people—maybe they do, I don't know that—but one among the 264 is John Sisson, and they say, "John Sisson, report." So he reports. The Lieutenant says, "Step forward." He refuses.

The Lieutenant says that he tried to find out why John Sisson refused. John doesn't remember that conversation, particularly he doesn't remember claiming that he had a religious belief about the war, his conscientious objection to it, and the Lieutenant didn't report any such conversation. The question for you based on these facts is whether John Sisson did what de did willfully.

[fol. 134] When you consider that he takes seriously—not everybody takes them seriously, but he takes seriously the Nuremberg principles. The Nuremberg principles, he testified, say, "You can't use as an excuse the fact that you go out and participate in a Nazi war effort, the fact that you were told to do that." He believed that. "Either I have to do what is fundamentally wrong or else I have to refuse to submit to induction and maybe I will be convicted and be labeled as a felon," a very, very serious charge punishable—well, punishment is not up to you. The Court has discretion. The possible punishment is five years and a $10,000 fine.

Now is this fellow a felon? Is this defendant the kind of person—

Mr. SUCHECKI. Objection, your Honor.

The COURT. It is improper to refer to a penalty, the scope of which depends upon the Court and as to which neither the jury nor counsel at the present time can have any idea at all.

Mr. FLYM. I beg the Court's pardon. Please forgive me. I didn't mean to say anything improper.

The COURT. You are quite right to point out that it is a serious crime for which the maximum punishment [fol. 135] is five years, and that you may say and nothing more.

Mr. FLYM. Yes. The question is whether this man is a felon. Do you want to punish people for doing what

they think is really right? Is that what justice is all about? Can it possibly be the meaning of the word willful? Can it possibly mean that somebody who does what he fundamentally thinks is right to avoid what is repulsive must be punished as a felon?

Is this what this country is all about? Let me suggest that if it is we don't have the kind of escape valve that we ought to have.

If people do what they think is fundamentally right and take the trouble to inform themselves, who hold opinions which can reasonably be held, I suggest that these people ought not be punished as felons.

I suggest that on the basis of the evidence you should acquit John Sisson because he did not do what he did willfully, if you interpret the word willfully in a reasonable manner.

Thank you.

The COURT. Mr. Suchecki.

Mr. SUCHECKI. May it please the Court, Mr. Foreman and members of the jury. As you all know, we all have different functions in this courtroom. Defense coun-[fol. 136] sel and myself are advocates. It is our responsibility to present to you as fairly and as forcibly as possible what we think the facts are in this situation. We would be derelict in our duty if we did not do that, to point out to you what we think the facts are. We also try to suggest to you what inferences to draw and what inferences may be drawn from the facts you heard.

It is basically, as his Honor will make quite clear, that you are asked to decide the case on the evidence as you heard it and on the law as his Honor explains it to you. That is our function. We are the advocates. His Honor tells us what the law is. You, the jury, find the facts.

What are the facts in this case? When the Government opened its case it told you that you would be able to find on the evidence that the defendant was subject to the lawful and valid orders of his draft board, and we proved that; that you would be able to find that the defendant had been found acceptable for induction into the armed forces of the United States after a physical examination and a mental examination, and we proved that.

You will be able to find that the defendant failed, neglected and refused to perform a duty required of him in the execution of the Military Selective Service Act of [fol. 137] 1967 in that he failed, neglected and refused to comply with an order made by his local board to submit to induction in the armed forces of the United States. We respectfully submit we have proved that.

We believe that on the evidence we have shown you he knew he wasn't complying with the order. This wasn't something that happened without his knowing about it. This was something he did, if you can remember my questions on cross-examination, of his own choice, his own volition. He did it deliberately. It was something he thought about and did. He did it with the purpose of not submitting to the order.

Now as we go over these facts, without rehashing the entire case to you, it is quite clear that the various steps, the various forms that you will see in the jury room will show you that the local board followed the procedure that it did, that he knew what he was supposed to do and he didn't do it.

One of the defenses we heard was that after all he didn't believe in deferments, that this was an unreasonable distinction between people. Let us examine that proposition.

Here we have a boy who went to an exclusive prep school, who went to one of the most famous universities [fol. 138] in the world, Harvard, who lives in one of the finest suburbs of Greater Boston, Lincoln, Massachusetts.

The COURT. Would you say you are engaging in impermissible prejudicial conduct?

Mr. SUCHECKI. I am trying to draw an inference from—

The COURT. It makes no difference whether he lives in Roxbury or in Lincoln, or whether he went to Harvard or to Howard.

Mr. SUCHECKI. However, he did say he was opposed to deferments. I believe, if I recollect the evidence correctly, there was some statement as to—and it is your recollection that counts and I don't remember whether it was in the argument but I think it was in the evidence—

that there was some feeling he had for those that were poor, that he as a student in college couldn't accept deferment in the Architectural School as 2-S. Yet if we examine the classification questionnaire, and you will remember I asked Mr. Sisson, "Did you receive a class 2-S deferment on October 6, 1964?" He did. And he didn't appeal that. Did he receive a class 2-S deferment on October 11, 1965? He did. And he did not appeal that. Again on November 7, 1966 a 2-S. Again on June 19, 1967 2-S.

[fol. 139] This goes to the point of intent, of doing something willfully. His Honor will explain to you that motive, why someone did something doesn't enter into the picture. What we are talking about is that he did receive an order to submit to induction in the armed forces of the United States. He received a notice of classification, Selective Service Form No. 110. In that form he was told that he had the right to personal appearance and appeal, He had another form 217 mailed to him, the registrant, on November 21, 1967.

We are now talking on the date following which he was classified 1-A. There was no request for a meeting with the Government Appeal Agent. There was no request for a personal appearance before the Board. There was no appeal from the Board's decision. None of the normal processes of the Selective Service System which obviously he knew about as an educated man. We can draw that inference by reading that form. None of this was used by the defendant. He was told to report in the orders that he received after being found physically and mentally qualified. At the last minute he decided he would not do so. He did this deliberately. He did this knowingly. He did it willfully. He knew the consequences. He told us that on the stand.

[fol. 140] And despite all of this, he refused to take that step forward. Not having taken that step forward, we submit in view of all the evidence before you that you should be able to find beyond a reasonable doubt that the defendant at the armed forces entrance and examining station at Boston, Massachusetts, on April 17, 1968, refused to take the traditional step forward, indicating

his submission to induction, and having examined all the evidence we are convinced that you will be able to find beyond a reasonable doubt that the defendant is guilty as charged.

Now I must tell you that the Government wins in every case, in every case when justice is done, and that is all we ask you to do, Mr. Foreman and members of the jury, to do justice in the case of United States of America against John Heffron Sisson, Jr.

Thank you.

[fol. 141] CHARGE TO THE JURY

Mr. Foreman and members of the Jury, this being the first criminal case on which you have sat, I shall begin with some general instructions which are not peculiar to this criminal case but which operate in almost all criminal cases.

When the government believes that a serious crime may have been committed under the Constitution of the United States the United States Attorney is authorized to go before a Grand Jury to see if he can get an indictment, but an indictment is by no means evidence in any case. It is merely a charge made by a group of persons, the so-called Grand Jury, who ordinarily have heard only government counsel and government witnesses, rarely, if ever, the defendant and, I think I can say, never defendant's ocunsel. You are the first Jury that will have heard this case. The indictment does nothing but specify the particular complaint which you are hearing.

Every defendant enters the courtroom with the benefit of the presumption of innocence. The government and the government alone has the burden of proof and it must prove every essential element of the crime charged beyond a reasonable doubt. That means that the government must [fol. 142] prove to a moral certainty every essential element of the crime. You must be persuaded as you would want to be persuaded of the most important concerns of your life.

In a criminal case, as in a civil case, the Jury is the judge of the facts in the case. Your recollection of the testimony is what counts and not what counsel or I remem-

ber or believe we remember. It is you and not counsel or the Court that determines issues of credibility. You are to decide which witnesses you believe, if any, and how much of their story, if any, you believe. You will apply the usual tests of common sense. There are no sovereign rules of law to guide you. Mr. Justice Brandeis, when he was a lawyer, used to say, "You ought to inquire as to what the witnesses' opportunity had been to observe, how accurate his memory was, how clearly he could tell a story and whether the could recognize the connection between his bit of evidence and the whole case. And, of course, it is always important to take into account the bias or prejudice of a witness. Every party who is a witness is naturally prejudiced in favor of himself. Other witnesses may or may not be also prejudiced.

So far as concerns questions of law, you are to take your instructions from the Court. Every Judge, not least this one, makes mistakes of law. But mistakes of law are to [fol. 143] be corrected by the Court of Appeals or, if necessary, by the Supreme Court of the United States. They are not to be corrected by you. It might be that some of you are better at the law than the Judge, but we couldn't tell what you were doing about the law if you did it in private in the Jury room, and everybody is entitled to know clearly what are said to be the governing principles of law. As I said, I may make a mistake but you are not to correct me on my mistake of law.

This case, as you will recall, began with an indictment in which the Grand Jury charges as follows: That on or about April 17, 1968, at Boston, in the District of Massachusetts, John Heffron Sisson, Jr., of Lincoln, in the District of Massachusetts, did unlawfully, knowingly and wilfully fail and neglect and refuse to perform a duty required of him under and in the execution of the Military Selective Service Act of 1967 and the rules, regulations and directions duly made pursuant thereto, particularly 32 Code of Federal Regulations 1632.14, in that he did fail and neglect and refuse to comply with an order of his local draft board to submit to induction into the armed forces of the United States; in violation of Title 50, Appendix, United States Code, Section 462.

I read this to you at the opening, and you will take this [fol. 144] indictment with you into the Jury room, and from the arguments addressed to you you will realize that the critical words as to which you are particularly cautioned to exercise your good judgment are the words "unlawfully, knowingly and wilfully." I shall define those words in due course but I want to put this indictment in its setting.

The Selective Service Act, or more technically as it is called the Military Selective Service Act of 1967, is a very long statute and it has been reproduced in 50 United States Code Appendix, and in particular part of it appears in Section 462, which is referred to in the indictment. So far as it is material that sections says: "Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title," that is the Selective Service Act, "or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty," and so forth, "shall be punished" as provided in the statute, subject to the discretion of the Court in accordance with the usual principles.

Now there are many regulations which have been adopted pursuant to the Military Selective Service Act. They relate to the duty to register, for example, within so many days after you reach your 18th birthday. They [fol. 145] relate to the filling out of various forms and the opportunity to claim conscientious objection and the like. They relate to physical and mental examinations and the like. They cover topics of appeal and the like. You have heard reference to many of them.

So far as this case is concerned, the only one of the numerous regulations which I think it might be worthwhile to read to you is the one with reference to induction. That is the one which is particularly referred to in the indictment as 32 Code of Federal Regulations 1632.14. It reads so far as material: "When the local board mails to a registrant an Order to Report for Induction or an Order for Transferred Man to Report for Induction, it shall be the duty of the registrant to report for induction at the time and place fixed in such order. If the time when the

registrant is ordered to report for induction is postponed, it shall be the continuing duty of the registrant to report for induction upon the termination of such postponement and he shall report for induction at such time and place as may be fixed by the local board. Regardless of the time when or the circumstances under which a registrant fails to report for induction when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for induction to his local board and to each [fol. 146] local board whose area he enters or in whose area he remains.

"Upon reporting for induction, it shall be the duty of the registrant (1) to follow the instructions of a member or clerk of the local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction, (3) to appear at the place where his induction will be accomplished, (4) to obey the orders of the representatives of the Armed Forces while at the place where his induction will be accomplished, (5) to submit to induction, and (6) if he is found not qualified for induction, to follow the instructions of the representatives of the Armed Forces as to the manner in which he will be transported on his return trip to the local board."

If you listened attentively to the case and if your recollection is the same as mine you will recall that the government offered rather elaborate evidence which no one tried to shake in cross examination that the defendant in this case did register, was classified, did have an opportunity to fill out a form 150 with respect to conscientious objection, did not do so, was ordered, as shown in Exhibit 11, to report on a day certain to his local board, that he did report to the local board, that he then went with other [fol. 147] men to the appropriate Boston place where a representative of the Armed Forces was prepared to induct him, and that then, according to his own statement, the defendant did not submit to induction, that is, he did not take the symbolic step forward which under the practice constitutes acceptance of induction.

I think that no one up to this point could find any dispute between the parties as to what were the facts. But the question which obviously has led to this trial is that the government claims that in his action or failure to act, his failure to step forward, the defendant was acting or refusing to act unlawfully, knowingly and wilfully. So the crux of the problem is was the defendant's failure to submit to induction unlawfully, knowingly and wilfully done? The words "wilfully and knowingly" have been defined with absolute unanimity in a series of cases in the Federal Courts. The definition was given in the predecessor statute to the present 1967 Selective Service Act, and aware of the construction put upon this language Congress as it were reenacted the Selective Service Act of 1967, and I instruct you as a matter of law that until we are told otherwise, if we ever are told otherwise, by the Supreme Court of the United States the words "unlawfully, knowingly and willfully" as used in this indictment, [fol. 148] in these regulations and in this statute mean deliberately, intentionally, knowingly. And it makes no difference whatsoever if the defendant has the finest motive in the world, it makes no difference whatsoever whether as a matter of reasonable belief he thought a particular war was or was not contrary to an international obligation, contrary to the Constitution of the United States, contrary to good order, morals, justice or any ethical or other consideration.

The only question which as a matter of law a Jury has a right to consider is whether the defendant if he failed to perform an act required under the statute and regulations was acting knowingly in the sense of with mental awareness, wilfully in the sense of intentionally and with free choice.

He may have all the views he likes of a political, ethical, religious or legal nature. They may be as reasonable as sometimes dissents of the Supreme Court are reasonable and sometimes the majority Opinions are reasonable, but as long as the law stands as it now stands his motivation, his good faith and the like are not in the least relevant to the question whether he is guilty or not.

Now let me make it clear, because counsel undertook, I am sure unintentionally, to speak about penalties. Penalties are the function of the Judge in most cases. Since [fol. 149] counsel have chosen to refer to this matter, I am going to tell you that any Judge who is worth his salt when he comes to determine the penalty may take into account a great many considerations which a Jury cannot take into acconut in determining the fact as to whether a man is guilty or not guilty, but those are not your concerns. You are here to apply the law as given to you by the Court.

Now there are some things that I think in justice to the defendant I ought to say because you might have derived the wrong impression. He told you he was deselected from the Peace Corps and it was not brought out, as perhaps it should have been, that there is no odium with respect to that. There is nothing like the equivalent of a dishonorable discharge. It just happened to be the fact he was not selected. Some of us are selected as judges and some are selected for the Peace Corps and some are not. It has nothing to do with the matter.

I think it is also my duty to point out to you that, as he prefers to be called, Mr. Styron, the minister, was testifying as to the character of the defendant in connection with his reputation for truth and veracity, if they be different. Any defendant in any criminal case has a right to call such witnesses who testify to his reputation for truth and veracity. That is a factor which you are en- [fol. 150] titled to take into account. I do not want you to be misled into thinking that because Mr. Styron is a clergyman somehow indirectly there gets into this case conscientious objection on religious belief. There is no such issue in this case.

You will remember that although he was afforded the opportunity to fill out a form 150 with respect to conscientious objection, this defendant never asked either administratively or indeed even here to be treated as a religious conscientious objector. No such issue is here.

Now I would be less than candid with you if I did not say that I know that in the Jury box, as in the courtroom, there are men and women who politically disagree

with the conduct of our affairs in Vietnam, who think we ought not be there, or who think we are not conducting ourselves in a proper way, or who think that world peace would be furthered if we would get out. Politically those are perfectly rational propositions. They have nothing to do with the problem before you. If you allow yourselves to vote a political ballot in a Jury room, you are false to your oath. All you have to decide is whether the government has proved beyond a reasonable doubt each of the essential elements of the indictment before you.

Have I omitted anything?

[Conference at the bench between Court and Counsel as follows:

[fol. 151] Mr. FLYM. The only additional request I would make, in addition to the requests which have been denied by your Honor, which we previously submitted, would be that the instruction your Honor gave that reasonable belief, insofar as it touches good faith and motive, is irrelevant. I would request that that be balanced by an instruction that insofar as reasonable belief bears on the question of intent that that may be considered by the Jury.

The COURT. I have said all I want to say.

End of Conference at the Bench.]

The COURT. All right, Mr. Foreman and members of the Jury. You will take out with you the indictment and you will take out with you all the exhibits. You do not take out with you the transcript of the testimony principally because it has not been typed out. But that does not mean that you are supposed to give greater weight to the written than to the oral testimony. It is entirely up to you.

I am sure you realize that you are required to be [fol. 152] unanimous, and that in a criminal case the Foreman speaks for the Jury without any written verdict unlike in a civil case. If there are any problems which arise as to which you absolutely imperatively require instruction, I shall be here and counsel, if they are interested in knowing what I say, if you ask a question, have a duty also to be here. I do not encourage you to put questions

to me but if you must do so put them in writing, fold them in a manner so that the court officer cannot see what you have asked me, and I will consider whether to answer your question.

Every case in the Jury system presupposes that jurors are rational, reasonable people, who will listen attentively to the arguments of their bretheren. The Jury room is no place for pride of opinion, It certainly is no place for political contentiousness. You have a very solemn duty. As Daniel Webster said, "Justice is the highest interest of man on earth." And could there be a more important case than this type of case which involves, needless to say, the reputation and possibly the liberty of an individual, and involves also the general welfare and common defense of the United States? When you are ready to report your verdict you will do so.

[The Jury leave the courtroom at 4:20 p.m. and return at 4:40 p.m.]

[fol. 153] The CLERK. Mr. Foreman and members of the Jury, have you agreed upon your verdict?

The COURT. The defendant should rise. Have you agreed upon your verdict?

The FOREMAN. Yes, we have, your Honor.

The CLERK. What say you, how have you found the defendant John Heffron Sisson, Jr., guilty or not guilty?

The FOREMAN. Guilty.

The CLERK. Harken to your verdict as the Court has recorded it. You have found the defendant John Heffron Sisson, Jr. guilty. So say you, Mr. Foreman, so say you all ladies and gentlemen of the Jury.

The COURT. I assume that the government is satisfied to have him go on his own recognizance without bail?

Mr. SUCHECKI. Yes, your Honor.

The COURT. Then you may go without bail. I call to your attention and to your counsel's attention Rule 34 in Arrest of Judgment. "The Court on motion of the defendant shall arrest judgment if the indictment or information does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within seven (7) days

[fol. 154] after verdict or finding of guilty or after a plea of guilty or nolo contendere, or within such further time as the Court may fix during the seven day period.

Insofar as the arguments addressed to the Court in advance of the trial suggest that because of the doctrine of United States v. Yakus or otherwise there is some problem as to whether this Court does have jurisdiction in criminal matters to impose a criminal punishment when a defendant is not free to raise questions relating to certain Constitutional questions or answer certain international law questions and others referred to in the preliminary memoranda, this point may or may not be renewed by a motion of the defendant in arrest of judgment provided the motion is seasonably made.

I also will state to you now and state to you later that you have a right of appeal in this matter to the Court of Appeals and in appropriate cases to the Supreme Court of the United States.

In view of the fact that you have testified that you do not have a criminal record other than traffic offenses, if any, and in view of the fact that during the course of this case much, if not all, of your prior history has come out, it would be a simple matter to prepare any report from the probation office. I will sentence you a week [fol. 155] from Monday, that is the 31st of March, at 9.30 in the morning, and I will also listen at that time to any motions which may be prepared in advance of that time which in any way relate to the verdict and judgment in this case. The Court will adjourn to—

Mr. FLYM. Your Honor—

The COURT. Yes?

Mr. FLYM. I did not want to interrupt the Court. May the Jury be polled?

The COURT. Oh, surely, the Jury may be polled.

The CLERK. Robert H. Weiser, guilty or not guilty?

Juror WEISER. Guilty.

The CLERK. Richard J. Hornbrook, guilty or not guilty?

Juror HORNBROOK. Guilty.

The CLERK. Justin H. McCarthy, guilty or not guilty?

Juror McCARTHY. Guilty.

The CLERK. John T. Burns, guilty or not guilty?

Juror BURNS. Guilty.

The CLERK. Claire G. Green, guilty or not guilty?

[fol. 156] Juror GREEN. Guilty.

The CLERK. Merle A. Lamont, guilty or not guilty?

Juror LAMONT. Guilty.

The CLERK. Donald M. Philbrick, guilty or not guilty?

Juror PHILBRICK. Guilty.

The CLERK. Esther Alman, guilty or not guilty?

Juror ALMAN. Present.

The COURT. Well, guilty or not guilty, you are asked. Guilty or not guilty?

Juror ALMAN. Guilty.

The CLERK. Mary C. Kelley, guilty or not guilty?

Juror KELLEY. Guilty.

The CLERK. Everett A. Williams, Jr., guilty or not guilty?

Juror WILLIAMS. Guilty.

The CLERK. Elaine Cribben, guilty or not guilty?

Juror CRIBBEN. Guilty.

The CLERK. Helen Davis Barker, guilty or not guilty?

[fol. 157] Juror BARKER. Guilty.

The COURT. I have another case, as you know, which I am not going to postpone, on Monday of next week. You and I know the nature of the case. You also know the size of the general jury venire. Do you want me to excuse these jurors, Mr. Flym?

You are now speaking on behalf of another client, not on behalf of this client. Are you content to have these persons in the venire? There is no use in having them come in if you are going to challenge every one of them on the ground he or she served today.

Mr. FLYM. May they be excused, your Honor?

The COURT. All right. You, ladies and gentlemen of the Jury, are excused until a week from Monday. The reason, as I can now tell you, and which you have probably guessed, is that there is another Selective Service case on Monday, and the same counsel presumably.

Mr. SUCHECKI. Yes, sir, I am ready.

The COURT. They would like under the circumstances to have 12 other jurors, and maybe you would be content, too. At any rate, you are excused until a week from Monday. The defendant is also excused until a week from Monday, he at 9.30 and you at 10.

You may now adjourn the Court until Monday at 9.30.

* * * *

[fol. 159]

INDEX

EXHIBITS

[fol. 160]

Government	EXHIBITS	Page
8	STATEMENT OF ACCEPTABILITY.	40
9	Letter dated February 29, 1968 from John H. Sisson, Jr. to Local Board No. 114.	41
10	SSS Form 150, Special Form for Conscientious Objector.	42
11	SSS Form 252, ORDER TO REPORT FOR INDUCTION.	43
Defendant		
A	SSS Form 112, Minutes of Local Board Meeting.	51
B	Book entitled *Vietnam and International Law.*	108
C	Book entitled *Vietnam: The Logic of Withdrawal.*	115
D	Specimen Ballot, Initiative Petition, Official Ballot, Cambridge, Mass., November 7, 1967.	121

114

1. NAME IN FULL (Last / First / Middle)	SELECTIVE SERVICE NUMBER
SISSON JR. John Heffron	19 - 114 - 46 - 137
2. PLACE OF RESIDENCE (Street and Number or RFD Route)	**3. DATE OF BIRTH**
Trapelo Road	May 14, 1946
City, Town, or Village / County / State / Zip Code	**4. PLACE OF BIRTH**
Lincoln Massachusetts 01773	City Boston
5. MAILING ADDRESS (If different than Item 2) (Street and Number or RFD Route)	State or Country Mass.
Same 2/23/65 Ok/457 more	**6. DATE OF REGISTRATION**
City, Town, or Village / County / State / Zip Code	4 June 1964

7. Name and address of person other than a member of your household who will always know your address

Dr. John H. Sisson Same

8. Description of Registrant

COLOR OF EYES	COLOR OF HAIR	HEIGHT (APPROX.)	WEIGHT (APPROX.)
Blue	Brown	5 ft. 11 in.	140

OTHER OBVIOUS PHYSICAL CHARACTERISTICS THAT WILL AID IN IDENTIFICATION:

None

[redacted]

Form Approved
Budget Bureau No. 33-R099.7

SELECTIVE SERVICE SYSTEM
REGISTRATION CARD

SSS Form No. 1-A (Original) (Rev

9. OCCUPATION	10. NATURE OF BUSINESS, SERVICE RENDERED, OR CHIEF PRODUCT
Student	

11. FIRM OR INDIVIDUAL BY WHOM EMPLOYED

Harvard College

12. PLACE OF EMPLOYMENT OR BUSINESS

Cambridge Massachusetts.

13. Active duty in the Armed Forces of the United States or a cobelligerent nation since Sept. 16, 1940:

ARMED FORCE OR COUNTRY	SERVICE NO.	DATE OF ENTRY	DATE OF SEPARATION

14. Present membership in a reserve component of the Armed Forces:

ARMED FORCE	SERVICE NO.	DATE OF ENTRY	GRADE

ORGANIZATION

I affirm that I have verified the foregoing answers and that they are true:

John H. Sisson Jr.
(Signature of registrant)

I certify that the person registered has read or has had read to him his answers; that I have witnessed his signature or mark; and that all of his answers of which I have knowledge are true, except as follows:

Ruth S Doar
(Signature of registrar)

Registrar for Local Board 14 (Number) Cambridge (City or county) Mass. (State)

16-0701 1963—686797

SELECTIVE SERVICE SYSTEM

Form approved.
Budget Bureau No. 33-R102.10.

CLASSIFICATION QUESTIONNAIRE

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(Local Board Stamp)

DATE QUESTIONNAIRE RETURNED
JUL 20 1964
Local Board
East Concord, Mass.

Date of Mailing July 2, 1964

COMPLETE AND RETURN BEFORE July 13, 1964

1. Name of Registrant (Last)	(First)	(Middle)	2. Selective Service No.
SISSON JR.,	John	Heffron	19 114 46 137

3. Mailing address: Trapelo Road (Number and street or R.F.D. route), Lincoln (City, town, or village), Mass. (County), Mass. (State), 01773 (Zip code)

(The above items, except the date received back at local board, are to be filled in by the local board clerk before the questionnaire is mailed.)

INSTRUCTIONS

The Law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have information to enable it to classify you. A notice of your classification will be mailed to you. When the questions in any series do not apply, enter "NONE" or "DOES NOT APPLY."

The Law also requires you to notify your local board in writing, within ten days after it occurs, of (1) every change in your address, physical condition and occupational, marital, family, dependency and military status, and (2) any other fact which might change your classification.

Fill out with typewriter or print in ink, except signatures.

Signed Ina Grossman
Member or Clerk of Local Board

STATEMENTS OF THE REGISTRANT

Confidential as Prescribed in the Selective Service Regulations

Series I—IDENTIFICATION

1. Name (Last)	(First)	(Middle)	2. Date of birth
Sisson	John	Heffron, Jr	May 14, 1946

3. Other names used (if none, enter "None")	4. Place of birth
None	Boston, Mass.

5. (a) Color eyes	(b) Color hair	(c) Height	(d) Weight	6. Citizen or subject of (country)
Blue	Brown	5' 11"	140 lbs.	U.S.A.

7. If naturalized citizen, give date, place, court of jurisdiction and naturalization number

8. Current mailing address: Trapelo Rd. R.F.D #1 (Number and street or R.F.D. route), Lincoln (City, town, or village), Middlesex (County), Massachusetts (State), 01773 (Zip code)

9. Telephone No. (If none, enter "None"): 259-8504

10. Social Security No. (If none, enter "None"): 032-34-8964

11. Name and address of person other than a member of my household who will always know my address: Dr Warren R Sisson (Name), 20 Crafts Rd. Chestnut Hill, Mass. (Address)

SSS Form No. 100 (Revised 11-20-63) Supplies of previous printings shall be used until exhausted.

Series II.—MILITARY RECORD

(Use Page 6, if necessary)

1. If you are now on or have been separated from active military service enter: (*a*) Armed Force .....
(*b*) Service number ..... (*c*) Date of entry .....
(*d*) Date of separation ..... (*e*) Character of service .....
(*f*) Type of transfer or discharge .....
2. If you are now a member of a Reserve component (including the National Guard) give: (*a*) Name and address of unit .....
(*b*) Service number ..... (*c*) Date of enlistment or appointment .....
3. If you are now a member of a Reserve Officer Training Corps or any other officer procurement program, state the program, the Armed Force, date of entry, and any identifying number .....

Series III.—MARITAL STATUS AND DEPENDENTS

(Use Page 6, if necessary)

1. (*a*) I (check one): ☒ have never been married; ☐ am a widower; ☐ am divorced; ☐ am married.
(*b*) I (check one if applicable): ☐ DO ☐ DO NOT live with my wife; if not, her address is .....
(*c*) We were married at ..... (Place) on ..... (Date)
2. I have ..... (Number) children under 18 years of age of whom ..... (Number) live with me in my home.
3. If you have no child, other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth.
4. The following other persons are wholly or partially dependent upon me for support:

Dependent	Relationship	Age	Approximate Income (Annual)	Amount Contributed by Me
Name				
Address			$	$
Name				
Address			$	$
Name				
Address			$	$
Name				
Address			$	$

Series IV.—REGISTRANT'S FAMILY

(Use Page 6, if necessary)

List below all the living members of your immediate family who are 14 years of age or over (except those shown in Series III) including your father, mother, brothers, sisters, father-in-law, and mother-in-law.

Relatives	Relationship	Age	Can This Relative Contribute to Support of Claimed Dependents? [1]
Name Dr. John Heffron Sisson	Father	47	☐ Yes ☐ No
Address Trenelo Rd. Lincoln Mass.			
Name Barbara Blagden Sisson	Mother	44	☐ Yes ☐ No
Address Trenelo Rd. Lincoln Mass			
Name Emilie Heffron Sisson	Sister	17	☐ Yes ☐ No
Address Trenelo Rd. Lincoln Mass.			
Name			☐ Yes ☐ No
Address			
Name			☐ Yes ☐ No
Address			
Name			☐ Yes ☐ No
Address			

[1] If your answer is "Yes," state extent of ability to contribute in detail on page 6.

40—10—7637-4

Series V.—OCCUPATION

(Use Page 6, if necessary)

If Engaged in Agriculture, Also Fill in Series VI

1. I am now employed as a (Give full title, for example: construction draftsman, turret lathe operator, stationary engineer, farm laborer, physics teacher, policeman, marriage-license clerk, etc., if unemployed, so state.) Unemployed

2. I do the following kind of work (Give a brief statement of your duties. Be specific.)

3. My employer is ..... (Name of organization or proprietor, not foreman or supervisor. Enter "Self" if self-employed.)

..... (Address of place of employment—Street, or R.F.D. Route, City, and State)

whose business is ..... (Nature of business, service rendered, or chief product)

4. (*a*) I have been employed by my present employer since ..... (Month and year)

(*b*) I am paid at the rate of $..... ☐ Per Hour ☐ Day ☐ Week ☐ Month.

(*c*) I work an average of ..... hours per week.

5. Other business or work in which I am now engaged is ..... (Nature of business, if none, enter "NONE")

6. Other occupational qualifications, including hobbies, I possess are .....

7. My work experience prior to that described in items 1 and 2, this series, is ...as a handyman for an Summer

8. I speak fluently the following foreign languages or dialects ..... French

9. I read and write well the following foreign languages or dialects ..... French

Series VI.—AGRICULTURAL OCCUPATION

(Use Page 6, if necessary)

1. I have been engaged continuously in farmwork since ..... (Month and year)

2. I am (check appropriate box): ☐ Sole owner-operator of a farm ☐ Joint owner-operator with another ☐ Farm manager ☐ Cash tenant or renter ☐ Standing rent tenant ☐ Sharecropper ☐ Share tenant ☐ Wage hand (hired man) ☐ Unpaid family worker.

3. I (check one): ☐ AM ☐ AM NOT personally responsible for the operation of the farm where I work.

4. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Hand

5. Principal products marketed during the last 2 years .....

6. Total value of products sold from this farm during the last crop year $.....

7. The number of year-round workers on this farm is ..... (Number) of whom ..... (Number) are hired hand.

8. Other farm experience .....

439-10-1945-1

Series VII.—MINISTER OR STUDENT PREPARING FOR THE MINISTRY

(Use Page 6, if necessary)

1. I have been a minister of the ..... (Name of sect or denomination) since ..... (Month) (Day) (Year)
and (check one): ☐ HAVE ☐ HAVE NOT been formally ordained.
2. I was formally ordained at .....
on (date) ..... by .....
3. I am a student preparing for the ministry pursuing a full-time course of instruction at the .....
(Name and address of theological or divinity school)
under the direction of .....
(Name of church or religious organization)
4. I am a student preparing for the ministry under the direction of .....
(Name of church or religious organization)
pursuing a full-time course of instruction at the .....
(Name and address of school)
leading to my entrance into .....
(Name and address of theological or divinity school)
in which I have been pre-enrolled.

Series VIII.—CONSCIENTIOUS OBJECTOR

(DO NOT SIGN THIS SERIES UNLESS YOU CLAIM TO BE A CONSCIENTIOUS OBJECTOR)

I claim to be a conscientious objector by reason of my religious training and belief and therefore request the local board to furnish me a Special Form for Conscientious Objector (SSS Form No. 150).

.....
(Signature)

Series IX.—EDUCATION

(Use Page 6, if necessary)

1. (a) I have completed 8 years of Grade School, 4 years of Junior High School, 4 years of High School, ... years of Trade or Business School. I (check one): ☑ DID ☐ DID NOT graduate from High School.
(b) I am a full-time student at .....
and expect to graduate on ..... (Name of high school) (Date)
(c) In Trade or Business School I pursued courses in .....
2. (a) I have completed 2 years of College, majoring in Latin American Studies
at Harvard College, Cambridge 38, Mass.
(Name and address of institution)
and (check one): ☐ HAVE ☑ HAVE NOT received a degree.
(b) I have received the following degree(s) ..... (Degree—Date) (Degree—Date) (Degree—Date)
3. I am a full-time student at Harvard College Cambridge 38, Mass.
(Name and address of institution)
majoring in Latin American Studies preparing for The Foreign Service
(Occupation or profession)
and expect to receive a degree on June 1966
(Date)

Series X.—STATEMENT OF ALIEN

1. I was admitted to the United States for (check one): ☐ PERMANENT RESIDENCE ☐ TEMPORARY RESIDENCE on .....
(Date of entry)
2. My Alien Registration Number is .....
If you have not been admitted to the United States for permanent residence, enter on page 6 a supplemental statement setting out the date you first entered the United States, with the dates of each subsequent departure and reentry when applicable. Attach copies of documentary evidence in your possession verifying your claimed alien status.

Series XI—PHYSICAL CONDITION

(Use Page 6, if necessary)

1. If you were ever found not qualified for service in the Armed Forces state (*a*) when .....
   (*b*) where .....
2. If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition .....
3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each hospital or institution, and the period of hospitalization.

Series XII—COURT RECORD

(Use Page 6, if necessary)

1. I (check one): ☑ HAVE ☑ HAVE NOT been convicted or adjudicated of a criminal offense or offenses other than minor traffic violations. (If "HAVE" box is checked, complete this series.)

Offense (other than minor traffic violations)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence

2. I (check one): ☐ AM ☑ AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify .....
(Awaiting trial, on probation, on parole, etc.)

Series XIII—SOLE SURVIVING SON

I (check one): ☐ AM ☑ AM NOT the sole surviving son of a family of which one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—You are required to make the registrant's certificate. If you cannot read, the questions and your answers shall be read to you by the person who assists you in completing this questionnaire. If you are unable to sign your name, you shall make your mark in the space provided for your signature in the presence of a person who shall sign as witness.

NOTICE.—Imprisonment for not more than 5 years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended)

I CERTIFY that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief.

July 13, 1964 (Date) — Registrant sign here ☞ John H. Lucas, Jr. (Signature or mark of registrant)

(Date) — (Signature of witness to mark of registrant)

If anyone has assisted you in completing this questionnaire, such person shall sign the following statement: I have assisted the registrant herein named in completing this questionnaire because .....
(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Number and Street or R.F.D. Route)

Date .....

(City) (State) (Zip code)

430-10-7[illegible]-0

Series XIV.—STATEMENT OF REGISTRANT

(Refer to Series Number)
(Use additional sheets if necessary)

(Signature of Registrant)

(Date)

s/N—18—75867-3

(Registrant Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President (Continued from Page 6)	Vote Yes	No

A

5

(Registrant Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote Yes	Vote No
1-11-64	Class 2-S	3	0
OCT 7 1964	SSS FORM 110 MAILED TO REG.		
10/1/65	Class 2-S	2	0
OCT 19 1965	SSS FORM 110 MAILED TO REG.		
6/27/66	Form 223 mailed to reg.		
11/7/66	2-S L. M	3	0
NOV 9 1966	SSS FORM 110 MAILED TO REG.		
6-19-67	2-A JHC1	3	0
JUN 20 1967	SSS FORM 110 MAILED TO REG.		
11-7-67	1-A	3	0
NOV 8 1967	SSS FORM 110 MAILED TO REG. Induction mailed		
12/19/67	Form 223 mailed to reg.		
2/23/68	Form 62 mailed--accepted. XXX		
3/4/68	Form 150 mailed to reg. per his request as of 2/29/68		
3/18/68	Form 252 mailed--Statement of Personal History Fm. 398		

(Continue on Page 7)

GPO 933-16-75367-1

SELECTIVE SERVICE SYSTEM

Approval Not Required

ADVICE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(Local Board Stamp)

GOVERNMENT EXHIBIT
Cr. 3
D.37-
3/21/69

Date of mailing
Nov. 21, 1967
(Month) (Day) (Year)

Selective Service No.
19 114 16 237

John H. Sisson Jr.,

Enclosed is your Notice of Classification (SSS Form 110). Your right to ask for a personal appearance or an appeal within 30 days is prescribed on the reverse side of that Notice of Classification.

Each local board has available a Government Appeal Agent to aid you with a personal appearance, an appeal, or any other procedural right. The Appeal Agent or his representative will give you legal counsel on Selective Service matters only at no charge.

If you should desire a meeting with him, this office will arrange a time and place for such meeting upon request.

(Member or Clerk of Local Board)

SELECTIVE SERVICE SYSTEM

This is your Notice of Classification, advising you of the determination of your selective service local board that you have been classified in accordance with Selective Service Regulations. The various classifications are described on the reverse side of this communication. You are required to have a Notice of Classification in your personal possession.

When a subsequent Notice of Classification is received you should destroy the one previously received, retaining only the latest.

FOR INFORMATION AND ADVICE
GO TO ANY LOCAL BOARD

DETACH ALONG THIS LINE

(Sign here) →

SELECTIVE SERVICE SYSTEM

NOTICE OF CLASSIFICATION

This is to certify that

(First name) (Middle initial) (Last name)

Selective Service No.

		–	

is classified in Class _____

until _____

by Local Board unless otherwise checked below:

☐ by Appeal Board vote of _____ to _____

☐ by President

_____
(Date of mailing)

_____
(Member, Executive Secretary, or clerk of local board)

_____
(Registrant's signature)

SSS Form 110 (Rev. 5-25-67)
(Previous printings are obsolete)
(Approval not required)

(Fold along this line)

The law requires you to have this Notice in addition to your Registration Certificate in your personal possession at all times and to surrender it upon entering active duty in the Armed Forces.

The law requires you to notify your local board in writing within 10 days after it occurs, (1) of every change in your address, physical condition and occupational (including student), marital, family, dependency and military status, and (2) of any other fact which might change your classification.

Any person who alters, forges, knowingly destroys, knowingly mutilates or in any manner changes this certificate or who, for the purpose of false identification or representation, has in his possession a certificate of another or who delivers his certificate to another to be used for such purpose, may be fined not to exceed $10,000 or imprisoned for not more than 5 years, or both.

(LOCAL BOARD STAMP)

SEE OTHER SIDE

SELECTIVE SERVICE CLASSIFICATIONS

CLASS I

Class I-A:	Registrant available for military service.
Class I-A-O:	Conscientious objector registrant available for noncombatant military service only.
Class I-C:	Member of the Armed Forces of the United States, the Environmental Science Services Administration, or the Public Health Service.
Class I-D:	Qualified member of reserve component, or student taking military training, including ROTC and accepted aviation cadet applicant.
Class I-O:	Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.
Class I-S:	Student deferred by law until graduation from high school or attainment of age of 20, or until end of his academic year at a college or university.
Class I-W:	Conscientious objector performing civilian work contributing to the maintenance of the national health, safety, or interest, or who has completed such work.
Class I-Y:	Registrant qualified for military service only in time of war or national emergency.

CLASS II

Class II-A:	Occupational deferment (other than agricultural and student).
Class II-C:	Agricultural deferment.
Class II-S:	Student deferment.

CLASS III

Class III-A:	Extreme hardship deferment, or registrant with a child or children.

CLASS IV

Class IV-A:	Registrant with sufficient prior active service or who is a sole surviving son.
Class IV-B:	Official deferred by law.
Class IV-C:	Alien not currently liable for military service.
Class IV-D:	Minister of religion or divinity student.
Class IV-F:	Registrant not qualified for any military service.

CLASS V

Class V-A:	Registrant over the age of liability for military service.

SPECIAL NOTICE

A registrant who was deferred on or before his 26th birthday should ascertain from his local board if his liability has been extended to his 28th or 35th birthday. (See other side.)

NOTICE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL

If this classification is by a local board, you may, within 30 days after the mailing of this notice, file a written request for a personal appearance before the local board (unless this classification has been determined upon such personal appearance). Following such personal appearance you may file a written notice of appeal from the local board's classification within the applicable period mentioned in the next paragraph after the date of mailing of the new notice of classification. If you do not wish a personal appearance but do want to appeal your case, you may do so by making such an appeal in writing, to your local board, within the specified time.

Appeal from classification by local board may be taken by filing written notice of appeal with your local board within one of the following periods after the date of mailing of this notice:

(1) 30 days if the registrant is located in the United States, its territories, possessions, Canada, Cuba, or Mexico OR;

(2) 60 days if the registrant is located in a foreign country other than Canada, Cuba, or Mexico.

You may file with your local board a written request that the appeal be submitted to the appeal board having jurisdiction over the area in which your principal place of employment or current place of residence is located.

If an appeal has been taken, and one or more members of the appeal board dissented from such classification, you may file a written notice of appeal to the President with your local board within 30 DAYS after the mailing of this notice.

Your Government Appeal Agent, attached to your selective service local board, is available to advise you regarding your rights and liabilities under the selective service law.

Your Selective Service Number, shown on the reverse side, should appear on all communications with your local board. Sign this form immediately upon receipt.

FOR INFORMATION AND ADVICE, GO TO ANY LOCAL BOARD

GPO : 1968 O - 308-944

SELECTIVE SERVICE SYSTEM

Approval Not Required

ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION

Inquire at local board as to where you should park your car.

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(LOCAL BOARD STAMP)

To John H. Sisson Jr.,
Trapelo Road
Lincoln, Mass.01773

GOVERNMENT EXHIBIT
Gr. 68
237-
W 3/21/69

December 19, 1967
(Date of mailing)

SELECTIVE SERVICE NO.			
19	114	46	137

You are hereby directed to present yourself for Armed Forces Physical Examination by reporting at:

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(Place of reporting)

on January 12, 1968 (Date) at 6:30 A. M. (Hour)

regulations do not permit you to drive your car from Concord to Boston.

Signed M. Gradinaks
(Member or clerk of Local Board)

IMPORTANT NOTICE

(Read Each Paragraph Carefully)

TO ALL REGISTRANTS:

When you report pursuant to this order you will be forwarded to an Armed Forces Examining Station where it will be determined whether you are qualified for military service under current standards. Upon completion of your examination, you will be returned to the place of reporting designated above. It is possible that you may be retained at the Examining Station for more than 1 day for the purpose of further testing or for medical consultation. You will be furnished transportation, and meals and lodging when necessary, from the place of reporting designated above to the Examining Station and return. Following your examination your local board will mail you a statement issued by the commanding officer of the station showing whether you are qualified for military service under current standards.

If you are employed, you should inform your employer of this order and that the examination is merely to determine whether you are qualified for military service. To protect your right to return to your job, you must report for work as soon as possible after the completion of your examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF MARRIED, BRING PROOF OF YOUR MARRIAGE. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION, IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

If you are so far from your own Local Board that reporting in compliance with this Order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that Local Board and make written request for transfer for examination.

TO CLASS I-A AND I-A-O REGISTRANTS:

If you fail to report for examination as directed, you may be declared delinquent and ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

TO CLASS I-O REGISTRANTS:

This examination is given for the purpose of determining whether you are qualified for military service. If you are found qualified, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety or interest. If you fail to report for or to submit to this examination, you will be subject to be ordered to perform civilian work in the same manner as if you had taken the examination and had been found qualified for military service.

U.S. GOVERNMENT PRINTING OFFICE : 19 1—O-704-294

December 26,1967

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781

Dear Sirs:

I have received your instructions to report for an Armed Forces Physical Examination on January 12, 1968. Unfortunately, I will be unable to report for the Examination at the specified location and on the specified date because I am leaving today for Montgomery, Alabama where I shall be working as a reporter on the Southern Courier. I am writing you both to notify you of my change of address and occupation and to request a transfer of my Physical Examination to a location in the area of my new address. As I may be assigned to work in Mississippi, I will not know my exact address until my arrival in Montgomery on January 1, 1968. I will inform you of my exact address immediately thereafter; until then any correspondence should be directed to me c/o The Southern Courier, 1012 Frank Leu Building, Montgomery, Alabama. Thank you very much for your help.

Sincerely,

John H. Sisson, Jr.

John H. Sisson, Jr.
19 114 46 137

Form approved.
Budget Bureau No. 33-R190.3.

SELECTIVE SERVICE SYSTEM

TRANSFER FOR ARMED FORCES PHYSICAL EXAMINATION OR INDUCTION

Part 1.—APPLICATION

TO LOCAL BOARD OF TRANSFER

P.O Box 457 Greenville Miss

Date January 17, 1968

SELECTIVE SERVICE NUMBER			
19	114	46	197

I JOHN (First name) E. (Middle name) SISSON, JR. (Last name)

of 902 N. Parish St., Jackson, Miss. (Present address) 314 Colorado St. Greenville c/o Nash Bason

present herewith my *(Check applicable box)*

☒ Order to Report for Armed Forces Physical Examination (SSS Form 223)

☐ Order to Report for Induction (SSS Form 252)

FEB 2

issued by Local Board Number 114, West Concord, Mass. 01781 (City or town, and State)

directing that I report on Jan. 22, 1968 (Date) and hereby request transfer to your local board to report on a date to be set by you. The reason I am absent from my own local board area is:

Residing and employed in this area. Employed by Southern Counties.

GOVERNMENT EXHIBIT 197-W 7 2/2/69

John E. Sisson Jr.
(Signature of registrant)

Part 2.—APPROVAL OR DISAPPROVAL

LOCAL BOARD NO. 27
SELECTIVE SERVICE SYSTEM
802 NORTH STATE STREET
JACKSON, MISS. 39201
(Stamp of Local Board of Transfer)

Date Jan. 17, 1968

☒ Request for transfer is approved. You will be notified by this local board of the date and place to report.

☐ Request for transfer is disapproved. You are directed to report as originally ordered by your local board.

Jean Lamb
[illegible] (Member or clerk, local board of transfer)

Part 3.—TRANSFER ACTION

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(Stamp of Local Board of Origin)

Date Jan 15, 1968

Registrant is transferred. Forms attached.

Registrant ☐ WAS ☒ WAS NOT previously examined.

Status non-volunteer
(Indicate "non-volunteer," "volunteer," "delinquent," "physician," "Class I-O reg," etc.)

Agnes M Grudzinskas
(Member or clerk, local board of origin)

Part 4.—DISPOSITION

LOCAL BOARD NO. 27
SELECTIVE SERVICE SYSTEM
802 NORTH STATE STREET
JACKSON, MISS. 39201
(Stamp of Local Board of Transfer)

Date Feb. 6, 1968

On Feb. 1, 1968, the registrant was *(Check one)*

☒ Found qualified; ☐ Found not qualified;

☐ Inducted into _____ (Branch of Service)

☐ Other *(Specify)* _____

Applicable forms are attached.

Mary B. Hayes
[illegible] (Member or clerk, local board of transfer)

SSS Form 250 (Revised 10-29-65) (Previous printings are obsolete.)

STATEMENT OF ACCEPTABILITY

LAST NAME - FIRST NAME - MIDDLE NAME	PRESENT HOME ADDRESS
SISSON, JOHN HEFFRON JR.	900 N. PARISH ST. JACKSON, MISS.

GOVERNMENT EXHIBIT No. 8

SELECTIVE SERVICE NUMBER	LOCAL BOARD ADDRESS
19 114 46 0137	LB# 27, JACKSON, MISS.

THE QUALIFICATIONS OF THE ABOVE-NAMED REGISTRANT HAVE BEEN CONSIDERED IN ACCORDANCE WITH THE CURRENT REGULATIONS GOVERNING ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS THIS DATE:

☒ 1. FOUND FULLY ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES.

☐ 2. FOUND NOT ACCEPTABLE FOR INDUCTION UNDER CURRENT STANDARDS.

REMARKS (Those to be directed to Local Board only)

FEB 2

DATE	PLACE	TYPED OR STAMPED NAME AND GRADE OF JOINT EXAMINING AND INDUCTION STATION COMMANDER	SIGNATURE
1 Feb 68	AFEES JACKSON, MISS.	KARL W. SCHOLZ, CPT, AGC	

DD FORM 1 MAR 62 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

LOCAL BOARD COPY

217

O-1 O W/LB 27

RECORD OF INDUCTION

Form Approved Budget Bureau No. 33-R042.4

DO NOT DEFACE THIS STAMP
Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(Local Board of Origin Stamp)

SECTION I - GENERAL (Local Board Will Prepare From Latest Information Available)

1. LAST NAME - FIRST NAME - MIDDLE NAME: SISSON JR., JOHN HEFFRON

2. SERVICE NUMBER (To be entered by Induction Station)

3. HOME OF RECORD (Number and street or rural route - If none so state - city or post office, county and state) (To be entered by Induction Station)

3a. CURRENT ADDRESS: 900 N. Parish St., Jackson, Mississippi

4. SELECTIVE SERVICE NUMBER: 39 11[illegible]6 137

5. DATE OF BIRTH: DAY 14 MONTH May YEAR 46

6. MARITAL STATUS: ☒ SINGLE ☐ MARRIED ☐ DIVORCED ☐ WIDOWED

7. DEPENDENTS
a. NO. CHILDREN UNDER 18: none
b. OTHER DEPENDENTS (Exclusive of wife, if married, and children indicated in Item 7a): none

8a. PRIOR MILITARY SERVICE ☐ YES ☐ NO (If "Yes", Complete Items Below)

b. ALLIED FORCE ☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ MARINE CORPS ☐ COAST GUARD
c. COMPONENT ☐ REGULAR ☐ USR ☐ RES ☐ NG
d. SERVICE NUMBER
e. DATE ENL., IND, APT AND/OR ORDER TO ACTIVE DUTY
f. DATE OF DISCHARGE OR RELEASE
g. CHARACTER OF DISCHARGE OR SERVICE
h. REASON AND AUTHORITY FOR DISCHARGE OR RELEASE (Cite appropriate service regulation)

9. PRESENT CIVILIAN TRADE OR OCCUPATION (Type of business): Reporter
10. LENGTH OF EXPERIENCE: YEARS — MONTHS 1

11. EDUCATION: "H.S.Grad"

GRADE OR YEAR COMPLETED (Use through all grades or years successfully completed) (Exclude trade or business schools)	ELEMENTARY AND HIGH SCHOOL													COLLEGE				POST GRADUATE			
	NONE	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	1	2	3	4

12. PLACE OF BIRTH: Boston, Mass.
12a. U.S. CITIZEN ☒ YES ☐ NO
IF NOT A U. S. CITIZEN
b. DATE OF ENTRY INTO U.S. FOR ☐ PERMANENT ☐ TEMPORARY RESIDENCE
c. ALIEN REGISTRATION RECEIPT CARD NUMBER
d. FOREIGN COUNTRY OF WHICH CITIZEN

13. IF NATURALIZED CITIZEN, GIVE DATE, PLACE, COURT OF JURISDICTION AND NATURALIZATION NUMBER

13a. CONVICTED OR ADJUDICATED OF CRIME OTHER THAN MINOR TRAFFIC VIOLATION (If "Yes", specify crime, date, location of court and sentence) ☐ YES ☒ NO
b. NOW IN CUSTODY OF LAW ☐ YES ☒ NO — IF ANSWER IS "YES", IS NECESSARY RELEASE OR WAIVER ATTACHED? ☐ YES ☐ NO
14. CONSCIENTIOUS OBJECTOR ☐ CLASS I-O ☐ CLASS I-A-O

15. PREVIOUSLY EXAMINED AND NOT ACCEPTABLE ☐ YES ☒ NO (If "Yes", indicate the following) (Check one)
☐ NOT ACCEPTABLE ON PREINDUCTION ☐ NOT ACCEPTABLE ON INDUCTION ☐ NOT ACCEPTABLE ON ENLISTMENT

SECTION II - LOCAL BOARD MEDICAL INTERVIEW

16. PHYSICAL DEFECTS (To be completed by Local Board)
a. LIST ALL DEFECTS AND DISEASES CLAIMED BY THE REGISTRANT AND ANY DEFECTS OR DISEASES WHICH THE REGISTRANT MAY HAVE, AND WHICH ARE KNOWN TO THE LOCAL BOARD (If no defects, indicate by "None"): "None"
b. ARE ANY OF THE DEFECTS OR DISEASES LISTED IN ITEM "a" ABOVE INCLUDED IN LIST OF DEFECTS (For 1948, SS Regs)? ☐ YES ☐ NO
c. REGISTRANT OR AFFIDAVIT REFERRED TO LOCAL BOARD MEDICAL ADVISOR ☐ YES ☐ NO

17. STATEMENT OF LOCAL BOARD MEDICAL ADVISOR (To be Completed if Item 16b is "Yes")
FINDINGS
a. ☐ REGISTRANT DOES NOT HAVE DISQUALIFYING DEFECT(S) CLAIMED
b. ☐ REGISTRANT HAS THE FOLLOWING DISQUALIFYING DEFECT OR DEFECTS (Specify the principal disqualifying defect first. List all other defects in order of significance, and attach affidavits or statements)

c. REMARKS

DATE | PLACE | SIGNATURE OF LOCAL BOARD MEDICAL ADVISOR (When Item 16c is "Yes")

SIGNATURE OF MEMBER OR CLERK OF LOCAL BOARD (When Item 16c is "No")
Agnes M. Chudzinski
Agnes M. Chudzinski, Clerk

DD FORM 1 NOV 47 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

X X X

SECTIONS III THROUGH X OF THIS FORM WILL BE FILLED OUT AT INDUCTION STATION

SECTION III - MEDICAL DETERMINATION

NOTE: Changes in physical profile or physical category on SF 88 will be entered on separate lines under original determination.

10. DATE	PHYSICAL PROFILE SERIAL						PHYSICAL CATEGORY			
	P	U	L	H	E	S	A	B	C	E
1 Feb 68	1	1	1	1	1	1	X			

SECTION IV - ORDER OF REGISTRANTS SERVICE PREFERENCE

19. PLACE ORDER OF PREFERENCE NUMBER IN BOX

☐ ARMY ☐ NAVY
☐ MARINE CORPS ☐ COAST GUARD
☐ AIR FORCE ☐ NONE

SECTION V - MENTAL DETERMINATION

20a. TEST - FORM - SCORE: AFQT 7C 94

AFQT MENTAL GROUP: I X | II | IIIA | IIIB | IV | V

☐ ADMINISTRATIVELY ACCEPTED

20b. OTHER TEST(S)

SCORE: ☐ QUALIFYING ☐ DISQUALIFYING

SECTION VI - MORAL DETERMINATION

21. REGISTRANT HAS BEEN PERSONALLY INTERVIEWED AT TIME OF:

a. [X] PREINDUCTION - REVEALED COURT ADJUDICATION OR CONVICTION ☐ YES ☒ NO* WAIVER: [X] NOT REQUIRED ☐ GRANTED ☐ NOT GRANTED ☐ NOT PROCESSED

b. ☐ INDUCTION - REVEALED COURT ADJUDICATION OR CONVICTION ☐ YES ☐ NO WAIVER: ☐ NOT REQUIRED ☐ GRANTED ☐ NOT GRANTED ☐ NOT PROCESSED

*Except minor traffic violations. REMARKS:

SECTION VII - DETERMINATION AT PREINDUCTION EXAMINATION

22. THE QUALIFICATIONS OF THE ABOVE NAMED REGISTRANT HAVE BEEN CONSIDERED IN ACCORDANCE WITH THE CURRENT REGULATIONS GOVERNING THE ACCEPTANCE OR SELECTIVE SERVICE REGISTRANTS AND HE WAS THIS DATE:

a. [X] FOUND ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES

b. ☐ FOUND NOT ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES FOR THE FOLLOWING REASONS:
ADMINISTRATIVE: ☐ MORAL ☐ ALIEN ☐ OTHER ADMINISTRATIVE (Specify)
☐ TRAINABILITY LIMITED (T-C)
☐ FAILED AFQT ONLY ☐ FAILED AFQT AND MEDICAL
FAILED MEDICAL ONLY: ☐ PSYCHIATRIC ☐ OTHER MEDICAL

DATE	PLACE
1 Feb 68	AFEES, Jackson, Miss.

TYPED NAME, GRADE, AND ORGANIZATION OF CO OF INDUCTION STATION: KARL W. SCHOLZ, CPT, AGC, AFEES

SIGNATURE: Karl W. Scholz

SECTION VIII - DETERMINATION AT INDUCTION EXAMINATION

23. TYPE OF EXAMINATION (Check one):
☐ PHYSICAL INSPECTION ☐ COMPLETE MEDICAL EXAMINATION (Due to lapse of time) ☐ COMPLETE MEDICAL AND MENTAL EXAMINATION (Enlistments, parolees, volunteers, etc.)

a. ☐ FOUND ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES

b. ☐ FOUND NOT ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES FOR THE FOLLOWING REASONS:
ADMINISTRATIVE: ☐ MORAL ☐ ALIEN ☐ OTHER ADMINISTRATIVE (Specify)
☐ TRAINABILITY LIMITED (T-C)
☐ FAILED AFQT ONLY ☐ FAILED AFQT AND MEDICAL
FAILED MEDICAL ONLY: ☐ PSYCHIATRIC ☐ OTHER MEDICAL

DATE	PLACE

TYPED NAME, GRADE AND ORGANIZATION OF CO OF INDUCTION STATION

SIGNATURE

SECTION IX - DISPOSITION OF INDUCTEE BY ARMED FORCES

24. THE QUALIFICATIONS OF THE ABOVE-NAMED INDIVIDUAL HAVE BEEN CONSIDERED IN ACCORDANCE WITH CURRENT REGULATIONS GOVERNING THE ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS INDUCTED INTO:
☐ ARMY ☐ NAVY ☐ MARINE CORPS ☐ COAST GUARD ☐ AIR FORCE

a. DATE OF INDUCTION

AND ORDERED TO REPORT TO:

b. ORGANIZATION | c. LOCATION | d. DATE

e. INDUCTION STATION AT WHICH INDUCTED

TYPED OR STAMPED NAME AND GRADE OF INDUCTION OFFICER

SIGNATURE OF INDUCTION OFFICER

SECTION X - FINGERPRINTS OF RIGHT HAND (Fingerprint impressions will be made in this space in the case of every person inducted)

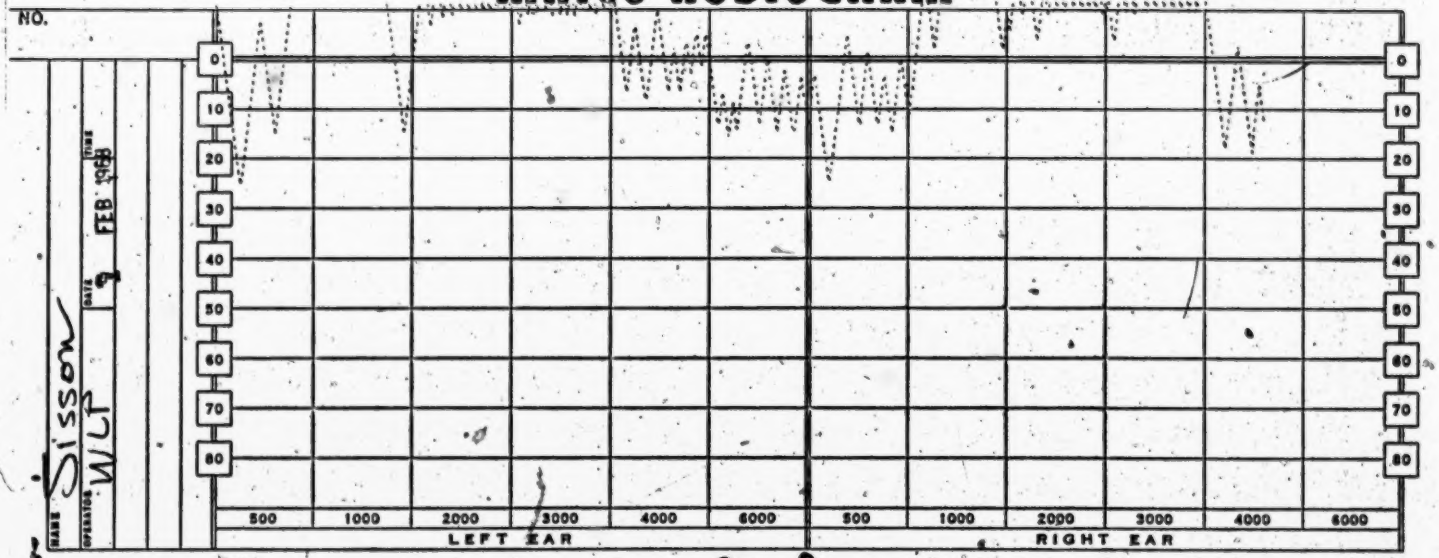
a. THUMB	b. INDEX	c. MIDDLE	d. RING	e. LITTLE

GPO : 1968

FORM 344

MAICO AUDIOGRAM

FOR USE WITH
RUDMOSE AUTOMATIC AUDIOMETER



MINNEAPOLIS — Maico — MINNESOTA

220

INSTRUCTIONS: Read the certification at the end of this questionnaire before entering the required data. Print or type all answers. All questions and statements must be completed. If the answer is "None," so state. Do not misstate or omit material fact since the statements made herein are subject to verification. If more space is needed, use the Remarks section, item 20, and attach additional sheets if necessary. The information entered hereon is for official use only and will be maintained in confidence.

1. (Print) FIRST NAME—MIDDLE NAME—MAIDEN NAME (If any)—LAST NAME
☑ MR. ☐ MRS. ☐ MISS
John Heffron Sisson, Jr.

2. STATUS
☐ CIVILIAN ☐ MILITARY ON ACTIVE DUTY

3. ALIAS(ES), NICKNAME(S), OR CHANGES IN NAME (Other than by marriage)
none

4. PERMANENT MAILING ADDRESS
Trapelo Rd Lincoln R.F.D.1, Mass

5. DATE OF BIRTH (Day, month, year)
14 May 1946

PLACE OF BIRTH (City, County, State, and Country)
Boston, Suffolk Massachusetts U.S.A.

PLACE CERTIFICATE RECORDED
City Hall Boston Mass.

HEIGHT 5'11" WEIGHT 145

COLOR OF EYES
green

COLOR OF HAIR
brown

SCARS, PHYSICAL DEFECTS, DISTINGUISHING MARKS
none

6. DO YOU HAVE A HISTORY OF MENTAL OR NERVOUS DISORDERS? ☐ YES ☑ NO ARE YOU NOW OR HAVE YOU EVER BEEN ADDICTED TO THE USE OF HABIT FORMING DRUGS SUCH AS NARCOTICS OR BARBITURATES? ☐ YES ☑ NO ARE YOU NOW OR HAVE YOU EVER BEEN A CHRONIC USER TO EXCESS OF ALCOHOLIC BEVERAGES? ☐ YES ☑ NO IF THE ANSWER TO ANY OF THE ABOVE IS "YES," EXPLAIN IN ITEM 20

7. U.S. CITIZEN	NATIVE	IF NATURALIZED, CERTIFICATE NO.	IF DERIVED, PARENTS' CERTIFICATE NO(S)	DATE, PLACE, AND COURT
☑	✓ YES ☐ NO			

ALIEN	REGISTRATION NO.	NATIVE COUNTRY	DATE AND PORT OF ENTRY	DO YOU INTEND TO BECOME A U.S. CITIZEN? YES / NO
☐				

8. MILITARY SERVICE

ARE YOU PRESENTLY ON ACTIVE DUTY IN THE U.S. ARMED FORCES DRAWING FULL PAY? ☐ YES ☑ NO IF "YES," COMPLETE THE FOLLOWING:

GRADE AND SERVICE NO.	SERVICE AND COMPONENT	ORGANIZATION AND STATION	DATE CURRENT ACTIVE SERVICE STARTED

ARE YOU PRESENTLY A MEMBER OF A U.S. RESERVE OR NATIONAL GUARD ORGANIZATION? ☐ YES ☐ NO IF "YES," COMPLETE THE FOLLOWING:

GRADE AND SERVICE NO.	SERVICE AND COMPONENT	ORGANIZATION AND STATION OR UNIT AND LOCATION

HAVE YOU PREVIOUSLY SERVED TOURS OF EXTENDED ACTIVE DUTY, DRAWING FULL PAY, FROM WHICH YOU WERE DISCHARGED OR SEPARATED TO CIVILIAN STATUS? ☐ YES ☐ NO IF "YES" COMPLETE THE FOLLOWING:

COUNTRY	SERVICE	COMPONENT	FROM (Date)	TO (Date)	TYPE DISCHARGES OR SEPARATIONS—GRADE AND SERVICE NO.

9. EDUCATION (Account for all civilian schools and military academies. Do not include service schools)

MONTH AND YEAR FROM	MONTH AND YEAR TO	NAME AND LOCATION OF SCHOOL	GRADUATE YES	GRADUATE NO	DEGREE
Sept 1959	June, 1963	Phillips Exeter Academy, Exeter, N.H.	✓	○	diploma
Sept 1963	June, 1967	Harvard College, Cambridge, Mass.	✓		B.A.

10. FAMILY (List in order given: parents; spouse, guardians, stepparents, foster parents, parents-in-law, former spouse(s) (if divorced give date and place), children, brothers and sisters, even though deceased. Include any others you resided with or with whom a close relationship existed or exists. If the person is not a U.S. citizen by birth, give date and port of entry, alien registration number, naturalization certificate number and place of issuance.)

RELATION AND NAME	DATE AND PLACE OF BIRTH	PRESENT ADDRESS, IF LIVING	U.S. CITIZEN YES	U.S. CITIZEN NO
FATHER John Heffron Sisson	Oct. 20, 1917 Boston	Trapelo Rd. Lincoln, Mass	✓	
MOTHER (Maiden name) Barbara Blagden	Nov. 11, 1920 N.Y.C.	Trapelo Rd., Lincoln, Mass.	✓	
SPOUSE (Maiden name)				
OTHER (Specify) Cynthia Heffron Sisson	June 11, 1947 Baltimore	53 Shepard St. Cambridge, Mass	✓	
Margaret Wendell Sisson	June 15, 1951 Boston	Trapelo Rd, Lincoln, Mass.	✓	

DD FORM 1 MAR 64 398 REPLACES EDITION OF 1 MAY 58, WHICH MAY BE USED.

Exception to Standard Form 86
Approved by Bureau of the Budget July 1963

11. OTHER RELATIVES AND ALIEN FRIENDS LIVING IN FOREIGN COUNTRIES (*List grandparents, first cousins, aunts, uncles, brothers- and sisters-in-law, and other persons with whom a close relationship existed or exists*)

RELATIONSHIP AND NAME	AGE	OCCUPATION	ADDRESS	CITIZENSHIP
NONE				

12. FOREIGN TRAVEL (*Other than as a direct result of United States military duties*)

DATES FROM—	DATES TO—	COUNTRY VISITED	PURPOSE OF TRAVEL
July 1966	Sept. 1966	Mexico	Study

13. EMPLOYMENT (*Show every employment you have had and all periods of unemployment*)

MONTH AND YEAR FROM—	MONTH AND YEAR TO—	NAME AND ADDRESS OF EMPLOYER	NAME OF IMMEDIATE SUPERVISOR	REASON FOR LEAVING
July 1967	Sept. 1967	Peace Corps, Washington, DC	Dave Seaton	fired
Jan. 1968	April 1968	The Southern Courier 99 Commerce St Montgomery, Alabama	Michael Lottman	induction

DID ANY OF THE ABOVE EMPLOYMENTS REQUIRE A SECURITY CLEARANCE? ☐ YES ☑ NO DO YOU HAVE ANY FOREIGN PROPERTY OR BUSINESS CONNECTIONS, OR HAVE YOU EVER BEEN EMPLOYED BY A FOREIGN GOVERNMENT, FIRM, OR AGENCY? ☐ YES ☐ NO HAVE YOU EVER BEEN REFUSED BOND? ☐ YES ☑ NO IF THE ANSWER TO ANY OF THE ABOVE IS "YES," EXPLAIN IN ITEM 20

SOCIAL SECURITY NO. 032-34-8964

14. CREDIT AND CHARACTER REFERENCES (*Do not include relatives, former employers, or persons living outside the United States or its Territories.*)

NAME (*List 3 credit and 3 character*)	YEARS KNOWN	STREET AND NUMBER (*Business address preferred*)	CITY	STATE OR TERRITORY
Cambridge Trust Co	1		Cambridge	Mass.
Harvard Trust Co.	4		Cambridge	Mass.
Harvard Coop	4		Cambridge	Mass.
D.C. Gradwick Quarton	15	Weston Rd	Lincoln	Mass.
Mr. John Page	9	West Neck Rd.	Huntington	N.Y.
Dr. John Womack	2	History Dept. Harvard College	Cambridge	Mass.
Miss Katy Seymour	2	267 S Main St	New Canaan	Conn.
Mr. Frank Bernstein	1	1 Doyle St.	Providence	R.I.

REMARKS

HISTORY

INSTRUCTIONS: Read the certification at the end of this questionnaire before entering the required data. Print or type all answers. All questions and statements must be completed. If the answer is "None," so state. Do not misstate or omit material fact since the statements made herein are subject to verification. If more space is needed, use the Remarks section, item 20, and attach additional sheets if necessary. The information entered hereon is for official use only and will be maintained in confidence.

15. LIST ALL RESIDENCES FROM 1 JANUARY 1937

MONTH AND YEAR FROM	MONTH AND YEAR TO	STREET AND NUMBER	CITY	STATE OR COUNTRY
Sept 1935	June 1936	Cleverly Hall Harvard College	Cambridge	Mass
Sept 1936	June 1940	Prescott House Harvard College	Cambridge	Mass
Sept 1940	June 1941	451 Mass Ave	Cambridge	Mass
Sept 1941	Dec 1942	814 Tremont St	Cambridge	Mass
Jan 1943	April 1943	314 Colorado St	Greenville	Mississippi

16. PAST AND/OR PRESENT MEMBERSHIP IN ORGANIZATIONS

NAME AND ADDRESS	TYPE (Social, fraternal, professional, etc.)	OFFICE HELD	MEMBERSHIP FROM	MEMBERSHIP TO
none				

17.

YES	NO	
	✓	ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF THE COMMUNIST PARTY U. S. A., OR ANY COMMUNIST ORGANIZATIONS ANYWHERE?
	✓	ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF A FASCIST ORGANIZATION?
	✓	ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF ANY ORGANIZATION, ASSOCIATION, MOVEMENT, GROUP OR COMBINATION OF PERSONS WHICH ADVOCATES THE OVERTHROW OF OUR CONSTITUTIONAL FORM OF GOVERNMENT, OR WHICH HAS ADOPTED THE POLICY OF ADVOCATING OR APPROVING THE COMMISSION OF ACTS OF FORCE OR VIOLENCE TO DENY OTHER PERSONS THEIR RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES, OR WHICH SEEKS TO ALTER THE FORM OF GOVERNMENT OF THE UNITED STATES BY UNCONSTITUTIONAL MEANS?
	✓	ARE YOU NOW OR HAVE YOU EVER BEEN AFFILIATED OR ASSOCIATED WITH ANY ORGANIZATION OF THE TYPE DESCRIBED ABOVE AS AN AGENT, OFFICIAL, OR EMPLOYEE?
	✓	ARE YOU NOW ASSOCIATING WITH, OR HAVE YOU ASSOCIATED WITH ANY INDIVIDUALS, INCLUDING RELATIVES, WHO YOU KNOW OR HAVE REASON TO BELIEVE, ARE OR HAVE BEEN MEMBERS OF ANY OF THE ORGANIZATIONS IDENTIFIED ABOVE?
	✓	HAVE YOU EVER ENGAGED IN ANY OF THE FOLLOWING ACTIVITIES OF ANY ORGANIZATION OF THE TYPE DESCRIBED ABOVE: CONTRIBUTION(S) TO, ATTENDANCE AT OR PARTICIPATION IN ANY ORGANIZATIONAL, SOCIAL, OR OTHER ACTIVITIES OF SAID ORGANIZATIONS OR OF ANY PROJECTS SPONSORED BY THEM; THE SALE, GIFT, OR DISTRIBUTION OF ANY WRITTEN, PRINTED, OR OTHER MATTER, PREPARED, REPRODUCED, OR PUBLISHED, BY THEM OR ANY OF THEIR AGENTS OR INSTRUMENTALITIES?

IF "YES," DESCRIBE THE CIRCUMSTANCES. ATTACH ADDITIONAL SHEETS FOR A FULL DETAILED STATEMENT. IF ASSOCIATED WITH ANY OF THE ABOVE ORGANIZATIONS, SPECIFY NATURE AND EXTENT OF ASSOCIATION WITH EACH, INCLUDING OFFICE OR POSITION HELD, ALSO INCLUDE DATES, PLACES, AND CREDENTIALS NOW OR FORMERLY HELD. IF ASSOCIATIONS HAVE BEEN WITH INDIVIDUALS WHO ARE MEMBERS OF THE ABOVE ORGANIZATIONS, THEN LIST THE INDIVIDUALS AND THE ORGANIZATIONS WITH WHICH THEY WERE OR ARE AFFILIATED.

18. HAVE YOU EVER BEEN DETAINED, HELD, ARRESTED, INDICTED OR SUMMONED INTO COURT AS A DEFENDANT IN A CRIMINAL PROCEEDING, OR CONVICTED, FINED, OR IMPRISONED OR PLACED ON PROBATION, OR HAVE YOU EVER BEEN ORDERED TO DEPOSIT BAIL OR COLLATERAL FOR THE VIOLATION OF ANY LAW, POLICE REGULATION OR ORDINANCE (*exclude minor traffic violations for which a fine or forfeiture of $25, or less was imposed*)? INCLUDE ALL COURT MARTIALS WHILE IN MILITARY SERVICE. ☐ YES ☑ NO

IF "YES," LIST THE DATE, THE NATURE OF THE OFFENSE OR VIOLATION, THE NAME AND LOCATION OF THE COURT OR PLACE OF HEARING, AND THE PENALTY IMPOSED OR OTHER DISPOSITION OF EACH CASE.

ARMED FORCES SECURITY QUESTIONNAIRE

IV.—QUESTIONS

(For each answer checked "Yes" under question 2, set forth a full explanation under "Remarks" below)

	YES	NO
1. I have read the list of names of organizations, groups, and movements set forth under Part II of this form and the explanation which precedes it.	✓	
2. Concerning the list of organizations, groups and movements set forth under Part II above:		
a. Are you now a member of any of the organizations, groups, or movements listed?		✓
b. Have you ever been a member of any of the organizations, groups, or movements listed?		✓
c. Are you now employed by any of the organizations, groups, or movements listed?		✓
d. Have you ever been employed by any of the organizations, groups, or movements listed?		✓
e. Have you ever attended any meeting of any of the organizations, groups, or movements listed?		✓
f. Have you ever attended any social gathering of any of the organizations, groups, or movements listed?		✓
g. Have you ever attended any gathering of any kind sponsored by any of the organizations, groups, or movements listed?		✓
h. Have you prepared material for publication by any of the organizations, groups, or movements listed?		✓
i. Have you ever corresponded with any of the organizations, groups, or movements listed or with any publication thereof?		✓
j. Have you ever contributed money to any of the organizations, groups, or movements listed?		✓
k. Have you ever contributed services to any of the organizations, groups, or movements listed?		✓
l. Have you ever subscribed to any publication of any of the organizations, groups, or movements listed?		✓
m. Have you ever been employed by a foreign government or any agency thereof?		✓
n. Are you now a member of the Communist Party of any foreign country?		✓
o. Have you ever been a member of the Communist Party of any foreign country?		✓
p. Have you ever been the subject of a loyalty or security hearing?		✓
q. Are you now or have you ever been a member of any organization, association, movement, group or combination of persons set on the Attorney General's list which advocates the overthrow of our constitutional form of government, or which has adopted the policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means?		✓
r. Have you ever been known by any other last name than that used in signing this questionnaire?		✓

REMARKS

REMARKS (Continued)

CERTIFICATION

In regard to any part of this questionnaire concerning which I have had any question as to the meaning, I have requested and have obtained a complete explanation. I certify that the statements made by me under Part IV above and on any supplemental pages hereto attached, are full, true, and correct.

TYPED FULL NAME OF PERSON MAKING CERTIFICATION	SERVICE NUMBER (If any)	SIGNATURE OF PERSON MAKING CERTIFICATION
John Heffron SISSON, Jr.		John Heffron Sisson Jr.
TYPED NAME OF WITNESS	**DATE**	**SIGNATURE OF WITNESS**
A. N. GODIN, 1Lt., USMC	17 Apr 1968	

226

Standard Form 89
(Rev. March 1965)
Bureau of the Budget
Circular A-32

REPORT OF MEDICAL HISTORY

THIS INFORMATION IS FOR OFFICIAL USE ONLY AND WILL NOT BE RELEASED TO UNAUTHORIZED PERSONS

89-103-01

1. LAST NAME—FIRST NAME—MIDDLE NAME	2. GRADE AND COMPONENT OR POSITION	3. IDENTIFICATION NO.
SISSON, JOHN HEFFRON JR.		
4. HOME ADDRESS (Number, street or RFD, city or town, zone and State) 900 N. PARISH ST. JACKSON, MISS.	5. PURPOSE OF EXAMINATION PRE-INDUCT	6. DATE OF EXAMINATION 1 FEB [illegible]

7. SEX	8. RACE	9. TOTAL YEARS GOVERNMENT SERVICE		10. AGENCY	11. ORGANIZATION UNIT
MALE	C Au	MILITARY	CIVILIAN		

12. DATE OF BIRTH	13. PLACE OF BIRTH	14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN
14 MAY 46	BOSTON, MASS.	(F) Dr. John H. Sisson Trapelo Rd. Lincoln, Massachusetts

15. EXAMINING ENTITY OR EXAMINER, AND ADDRESS	16. OTHER INFORMATION
ACCES, JACKSON, MISS.	SS019 114 46 0137 M/EB3W

17. SUMMARY OF EXAMINEE'S PRESENT HEALTH IN OWN WORDS *(Follow by description of past history, if complaint exists)*

good

18. FAMILY HISTORY

19. HAS ANY FAMILY HISTORY *(Parent, brother, sister, wife or husband, or child)*

RELATION	AGE	STATE OF HEALTH	IF DEAD, CAUSE OF DEATH	AGE AT DEATH	YES	NO	(Check each item)	REMARKS
FATHER	50	good				✓	HAD TUBERCULOSIS	
MOTHER	49	good				✓	HAD SYPHILIS	
[illegible]						✓	HAD DIABETES	
						✓	HAD CANCER	
BROTHERS						✓	HAD KIDNEY TROUBLE	
AND						✓	HAD HEART TROUBLE	
SISTERS						✓	HAD STOMACH TROUBLE	
						✓	HAD RHEUMATISM *(Arthritis)*	
CHILDREN						✓	HAD EPILEPSY, NERVOUS BREAKDOWN, OR PSYCHONEUROSIS	
						✓	HAD CONVULSIONS *(Fits)*	
						✓	CONSUMPTION SINCE	
						✓	OTHER DISEASE	

20. HAVE YOU EVER HAD OR HAVE YOU NOW *(Place check at left of each item)*

YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)
	✓	SCARLET FEVER, ERYSIPELAS		✓	GOITER	✓		TUMOR, CYSTS, CANCER		✓	"PUS" OR LOCKED JAW
	✓	DIPHTHERIA		✓	WHEEZINESS		✓	RUPTURE / HERNIA		✓	POOR FEELINGS
	✓	RHEUMATIC FEVER		✓	NIGHT SWEATS *(Night sweats)*		✓	APPENDICITIS		✓	HEMORRHOIDS
✓		SPINAL OR POSTURAL ABNORMALITY		✓	ASTHMA		✓	PILES OR RECTAL DISEASE		✓	PARALYSIS *(Infantile)*
✓	✓	MUMPS		✓	SHORTNESS OF BREATH		✓	FREQUENT OR PAINFUL URINATION		✓	EPILEPSY OR FITS
	✓	COLOR BLINDNESS		✓	PAIN OR PRESSURE IN CHEST		✓	KIDNEY STONE OR BLOOD IN URINE		✓	CAR, TRAIN, SEA, OR AIR SICKNESS
	✓	FREQUENT OR SEVERE HEADACHES		✓	CHRONIC COUGH		✓	SUGAR OR ALBUMIN IN URINE		✓	FREQUENT TROUBLE SLEEPING
	✓	DIZZINESS OR FAINTING SPELLS		✓	PALPITATION OR POUNDING HEART		✓	BOILS		✓	FREQUENT OR PERSISTENT NIGHTMARES
	✓	EYE TROUBLE		✓	HIGH OR LOW BLOOD PRESSURE		✓	VD—SYPHILIS, GONORRHEA, ETC.		✓	DEPRESSED OR EXCESSIVE WORRY
	✓	EAR, NOSE OR THROAT TROUBLE		✓	CRAMPS IN YOUR LEGS		✓	RECENT GAIN OR LOSS OF WEIGHT		✓	LOSS OF MEMORY OR AMNESIA
	✓	RECURRENT COLDS		✓	FREQUENT INDIGESTION		✓	ARTHRITIS OR RHEUMATISM		✓	SEX WORRIES
	✓	HEARING LOSS		✓	STOMACH, LIVER OR INTESTINAL TROUBLE		✓	BACK, JOINT, OR OTHER DEFORMITY		✓	NERVOUS TROUBLE OF ANY KIND
	✓	CHRONIC OR FREQUENT COLDS		✓	GALL BLADDER TROUBLE OR GALL STONES		✓	LAMENESS		✓	ANY KIDS OR RHEUMATIC HEART
	✓	SINUS TROUBLE OR HAY FEVER		✓	ANEMIA		✓	LOSS OF ARM, LEG, FINGER, OR TOE		✓	EXCESSIVE SWEATING AT NIGHT
	✓	ALLERGIES		✓	ARE YOU NOW UNDER A DOCTOR'S CARE FOR ANY DISEASE OR CONDITION		✓	PAINFUL OR "TIRED" SHOULDER OR ELBOW		✓	HABITUAL TONSILITIS
	✓	HAY FEVER	✓		HISTORY OF BROKEN BONES		✓	RECURRENT BACK PAIN		✓	PERIODS OF UNCONSCIOUSNESS
	✓	HERNIA OR RUPTURE									
	✓	SKIN DISEASE									

21. HAVE YOU EVER *(Check each item)*				22. FEMALES ONLY. A. HAVE YOU EVER—			23. COMPLETE THE FOLLOWING:	
✓	WORN GLASSES—CONTACT LENS		✓ ATTEMPTED SUICIDE			BEEN PREGNANT		AGE AT ONSET OF MENSTRUATION
	✓ WORN AN ARTIFICIAL EYE		✓ BEEN A SLEEP WALKER			HAD A VAGINAL DISCHARGE		INTERVAL BETWEEN PERIODS
	✓ WORN HEARING AIDS		✓ LIVED WITH LUNGERS WHO HAD TUBERCULOSIS			BEEN TREATED FOR A FEMALE DISORDER		DURATION OF PERIODS
	✓ STUTTERED OR STAMMERED		✓ COUGHED UP BLOOD			HAD PAINFUL MENSTRUATION		DATE OF LAST PERIOD
	✓ WORN A BRACE OR BACK SUPPORT		✓ HAS EXCESSIVE AFTER BLEEDING OR TROUBLE AFTER EXTRACTION			HAD IRREGULAR MENSTRUATION		QUANTITY: ☐ NORMAL ☐ EXCESSIVE ☐ SCANT

25. HOW MANY DAYS HAVE YOU HAD IN THE PAST THREE YEARS?	26. WHAT IS THE LONGEST PERIOD YOU HELD ANY OF THESE JOBS?	27. WHAT IS YOUR USUAL OCCUPATION?	28. ARE YOU *(Check one)*
0	0	STUDENT	☑ RIGHT HANDED ☐ LEFT HANDED

	✓	17. HAVE YOU EVER AVOIDED EMPLOYMENT OR BEEN UNABLE TO HOLD A JOB BECAUSE OF: A. SENSITIVITY TO CHEMICALS, DUST, SUNLIGHT, ETC.
	✓	B. INABILITY TO PERFORM CERTAIN DUTIES
	✓	C. INABILITY TO ASSUME CERTAIN POSITIONS
	✓	D. OTHER MEDICAL REASONS (*If yes, give reasons*)
	✓	18. HAVE YOU EVER WORKED WITH RADIOACTIVE SUBSTANCES?
	✓	19. DID YOU HAVE DIFFICULTY WITH SCHOOL STUDIES OR EXAMINATIONS? (*If yes, give details*)
	✓	20. HAVE YOU EVER BEEN HOSPITALIZED? (*If yes, state reason and give details*)
✓		21. HAVE YOU HAD, OR HAVE YOU BEEN ADVISED TO HAVE, ANY OPERATIONS? (*If yes, describe and give age at which occurred*) — Removal of thyroglossal duct cyst at age 3.
	✓	22. HAVE YOU EVER BEEN A PATIENT (*committed or voluntary*) IN A MENTAL HOSPITAL OR SANITORIUM? (*If yes, specify when, where, why, and name of doctor, and complete address of hospital or clinic*)
		23. HAVE YOU HAD OR ARE YOU NOW SUFFERING OR HEALING FROM THOSE INJURIES NOTED? (*If yes, specify when, where, and give details*)
✓		24. HAVE YOU CONSULTED OR BEEN TREATED BY CLINICS, PHYSICIANS, HEALERS, OR OTHER PRACTITIONERS WITHIN THE PAST 5 YEARS? (*If yes, give complete address of doctor, hospital, clinic, and details*) — Dr. Carter Reed Rose, Massachusetts General Hospital, Boston, Mass. (treated me for torn ligaments in both knees); Dr. William McFarland, University Health Services, Cambridge, Mass. (treated bimalleolar fracture of left ankle)
	✓	25. HAVE YOU TREATED YOURSELF FOR ILLNESSES OTHER THAN MINOR COLDS? (*If yes, which illnesses*)
	✓	26. HAVE YOU EVER BEEN REJECTED FOR MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (*If yes, give date and reason for rejection*)
	✓	27. HAVE YOU EVER BEEN DISCHARGED FROM MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (*If yes, give date, reason, and type of discharge: whether honorable, other than honorable, for unfitness or unsuitability*)
	✓	28. HAVE YOU EVER RECEIVED, IS THERE PENDING, OR HAVE YOU APPLIED FOR PENSION OR COMPENSATION FOR EXISTING DISABILITY? (*If yes, specify what kind, granted by whom, and what amount, when, why*)

NOTE: A FALSE OR FRAUDULENT ANSWER TO ANY OF THE QUESTIONS ON THIS FORM MAY BE PUNISHED BY FINE OR IMPRISONMENT (18 U.S.C., 1001)

I HEREBY AUTHORIZE ANY OF THE DOCTORS, HOSPITALS, OR CLINICS MENTIONED ABOVE TO FURNISH THE GOVERNMENT A COMPLETE TRANSCRIPT OF MY MEDICAL RECORD FOR PURPOSES OF FURNISHING MY APPLICATION FOR THIS EMPLOYMENT OR DUTIES.

SIGNATURE OF EXAMINEE	SIGNATURE
John Hatton Sisson, Jr.	John H. Sisson Jr.

(20) UCHD 5 yrs/bad R&L knees both - ligaments repair no surgery required. Lft medial malleolus fracture in 1966 & thyroglossal duct cyst removed @ age 3.

(21) Has worn glasses 2-3 years.

NAME AND ADDRESS OF EXAMINER	DATE	SIGNATURE	NUMBER OF ATTACHED SHEETS
H. SCHUSTER USPHS MD	FEB 1968		

☆ U.S. GOVERNMENT PRINTING OFFICE : 1968 O—294-121

(Rev. June 1956)
Bureau of the Budget
Circular A-32 (Rev.)

REPORT OF MEDICAL EXAMINATION

1. LAST NAME—FIRST NAME—MIDDLE NAME	2. GRADE AND COMPONENT OR POSITION	3. IDENTIFICATION NO.
SISSON, JOHN HEFFRON JR.		

4. HOME ADDRESS (Number, street or R.F.D., city or town, zone and State)	5. PURPOSE OF EXAMINATION	6. DATE OF EXAMINATION
900 N. PARISH ST. JACKSON, MISS.	PRE-INDUCT	1 FEB 1963

7. SEX	8. RACE	9. TOTAL YEARS GOVERNMENT SERVICE		10. AGENCY	11. ORGANIZATION UNIT
		MILITARY	CIVILIAN		
MALE	CAU				

12. DATE OF BIRTH	13. PLACE OF BIRTH	14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN
14 MAY 46	BOSTON, MASS.	(F) Dr. John H. Sisson Trapelo Rd. Lincoln, Massachusetts Cities

15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS	16. OTHER INFORMATION
AFEES, JACKSON, MISS.	SS#19 114 46 0137 W/LB627

17. RATING OR SPECIALTY	TIME IN THIS CAPACITY (Total)	LAST SIX MONTHS

CLINICAL EVALUATION

Item No.	Enter each item in appropriate column; enter "Nil" if not evaluated.	Abnormal (Explain)
12	HEAD, FACE, NECK, AND SCALP	
13	NOSE	
14	SINUSES	
15	MOUTH AND THROAT	
16	EARS—GENERAL (Ext. & ext. canals) (Auditory acuity under items 70 and 71)	
17	DRUMS (Perforation)	
18	EYES—GENERAL (Visual acuity and refraction under items 58, 60 and 61)	
19	OPHTHALMOSCOPIC	
20	PUPILS (Equality and reaction)	
21	OCULAR MOTILITY (Associated parallel movements, nystagmus)	
22	LUNGS AND CHEST (Include breasts)	
23	HEART (Thrust, size, rhythm, sounds)	
24	VASCULAR SYSTEM (Varicosities, etc.)	
25	ABDOMEN AND VISCERA (Include hernia)	
26	ANUS AND RECTUM (Hemorrhoids, fistulae) (Prostate, if indicated)	
27	ENDOCRINE SYSTEM	
28	G-U SYSTEM	
29	UPPER EXTREMITIES (Strength, range of motion)	
30	FEET	
31	LOWER EXTREMITIES (Except feet) (Strength, range of motion)	X
32	SPINE, OTHER MUSCULOSKELETAL	
33	IDENTIFYING BODY MARKS, SCARS, TATTOOS	
34	RACIAL LYMPHATICS	
61	NEUROLOGIC (Equilibrium tests under item 72)	
62	PSYCHIATRIC (Specify any personality deviation)	
63	PELVIC (Females only) (Check how done) ☐ VAGINAL ☐ RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

(31) Old keloid scar on both knees

(Continue in item 73)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)

O—Restorable tooth
I—Nonrestorable tooth
X—Missing tooth
XXX—Replaced by dentures
(B X B)—Fixed bridge, brackets to include abutments

RIGHT	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	LEFT
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	

REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES

ACCEPTABLE

LABORATORY FINDINGS

45. URINALYSIS: A. SPECIFIC GRAVITY			46. CHEST X-RAY (Place, date, film number and result)
B. ALBUMIN: NEGATIVE	D. MICROSCOPIC		1 FEB 1963 AFEES, JACKSON, MISS. AG
C. SUGAR: NEGATIVE			
47. SEROLOGY (Specify test used and result) RPR Neg	48. EKG	49. BLOOD TYPE AND RH FACTOR	50. OTHER TESTS

MEASUREMENTS AND OTHER FINDINGS

51. HEIGHT	52. WEIGHT	53. COLOR HAIR	54. COLOR EYES	55. BUILD: (Check one)	SLENDER	MEDIUM	HEAVY	OBESE	56. TEMPERATURE
70	145	Brown	Blue-green		✓				

57. BLOOD PRESSURE (Arm at heart level)

A. SITTING	SYS.	DIAS.	B. RECUMBENT	SYS.	DIAS.	C. STANDING (3 min.)	SYS.	DIAS.
	120	70						

58. PULSE (Arm at heart level)

A. SITTING	B. AFTER EXERCISE	C. 3 MIN. AFTER	D. RECUMBENT	E. AFTER STANDING 3 MIN.
76				

59. DISTANT VISION

RIGHT EYE	20/20	CORR. TO 20/	20
LEFT EYE	20/20	CORR. TO 20/	20

60. REFRACTION

RIGHT EYE	BY +1.25	S -0.25	CX 105	20/25
LEFT EYE	BY +1.00	S -0.75	CX 75	20/25

61. NEAR VISION

RIGHT EYE	CORR. TO 20/	20	BY
LEFT EYE	CORR. TO 20/	20	BY

62. HETEROPHORIA (Specify distance)

ET° EX° R. H. L. H. PRISM DIV. PRISM CONV. CT PC PD

63. ACCOMMODATION		64. COLOR VISION (Test used and result)	65. DEPTH PERCEPTION (Test used and score)	UNCORRECTED
RIGHT	LEFT	PIP 14/14		CORRECTED
66. FIELD OF VISION		67. NIGHT VISION (Test used and score)	68. RED LENS TEST	69. INTRAOCULAR TENSION
			✓	

70. HEARING	71. Ruchm AUDIOMETER	72. PSYCHOLOGICAL AND PSYCHOMOTOR (Tests used and score)
RIGHT WV /15 SV /15		
LEFT WV /15 SV /15		

	500	1000	2000	3000	4000	6000	8000
RIGHT	0	-10	-10	-10	-15		
LEFT	0	-10	-10	-10	-10		

73. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY

AFQT 7C 94 I

GT ____ AA ____

PHYSICAL INSPECTION 17 APR 1968
AFEES, BOSTON, MASS. (Date)
No Additional Defects discovered
(FIT) (UNFIT) For Military Service

SIGNATURE

(Use additional sheets if necessary)

74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)

75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)

76. A. PHYSICAL PROFILE

P	U	L	H	E	S
1	1	1	1	1	1

77. EXAMINEE (Check)

A. ☒ QUALIFIED FOR INDUCTION
B. ☐ NOT QUALIFIED FOR

B. PHYSICAL CATEGORY 1X

78. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

A	B	C	E
X			

79. TYPED OR PRINTED NAME OF PHYSICIAN — SIGNATURE

80. TYPED OR PRINTED NAME OF PHYSICIAN — SIGNATURE

81. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (Indicate which) — SIGNATURE

82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY
R. SCHUSTER USPHS MO

SIGNATURE R. Schuster MD

NUMBER OF ATTACHED SHEETS

* U.S. GOVERNMENT PRINTING OFFICE : 1968 O—788-790

February 29, 1968

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781

Dear Sirs:

I find myself to be conscientiously opposed to service in the Armed Forces. Would you please send me SSS Form No. 150 so that I might make my claim as a conscientious objector. Thank you for your cooperation.

Sincerely,

John H. Sisson, Jr.

John H. Sisson, Jr.

Selective Service No.:
19 114 46 137

John H. Sisson, Jr.
P. O. Box 457
Greenville, Mississippi 38701

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Massachusetts 01781

No. 032478

RETURN RECEIPT REQUESTED

Form approved.
Budget Bureau No. 33-R113.7.

SELECTIVE SERVICE SYSTEM

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

GOVERNMENT EXHIBIT 69-237-W

(Local Board Stamp)

DATE QUESTIONNAIRE RECEIVED AT LOCAL BOARD

Date of Mailing .....

COMPLETE AND RETURN BEFORE .....

1. Name of Registrant (First) (Middle) (Last)	2. Selective Service No.
3. Mailing address (Number and street, city, county and State, and Zip Code)	

(The above items, except the date received back at local board, are to be filled in by the local board clerk before the questionnaire is mailed.)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form 100).

The items in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

A I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces.

.....
(Signature of registrant)

B I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

.....
(Signature of registrant)

Under the provisions of section 6 (j) of the Military Selective Service Act of 1967, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEF

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Do you believe in a Supreme Being? ☐ Yes . ☐ No

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

.....

.....

SSS Form 150 (Revised 3-10-66). (Previous printings may be used.)

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

5. Under what circumstances, if any, do you believe in the use of force?

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance, and state in each instance the type of school (public, church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended	
			From—	To—
			19..	19..
			19..	19..
			19..	19..
			19..	19..

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked	
			From—	To—
			19..	19..
			19..	19..
			19..	19..
			19..	19..
			19..	19..

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence	
			From—	To—
			19	19
			19	19
			19	19
			19	19
			19	19
			19	19

4. Give the name and address of your parents and indicate whether they are living or not.

5. (a) State the religious denomination or sect of your father

(b) State the religious denomination or sect of your mother

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

2. Are you a member of a religious sect or organization? ☐ Yes ☐ No. If your reply to item 2 is "yes," complete items (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

(b) When, where, and how did you become a member of said sect or organization?

(c) State the name and location of the church, congregation, or meeting where you customarily attend

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

Series V.—REFERENCES

INSTRUCTIONS.—This series must be completed. If more space is needed use extra sheets of paper.

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of professed convictions against participation in war.

NAME	FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—Every registrant claiming to be a conscientious objector shall make this certificate. If the registrant ca read, the items and his replies thereto shall be read to him by the person who assists him in completing this form. If the re trant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonm is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate reg ing or bearing upon a classification. (Military Selective Service Act of 1967.)

I, _____, certify that I am the registrant named and described in the foreg statements in this form; that I have read (or have had read to me) the statements made by and about me, and that each and e such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the f going _____ (are, are not) in my own handwriting.

Registrant sign here ☞

_____
(Signature or mark of registrant)

_____ _____
(Signature of witness to mark of registrant) (Date)

_____
(Date)

_____
(Signature of witness to mark of registrant)

_____
(Date)

If another person has assisted the registrant in completing this form, such person shall sign the following statement:

I have assisted the registrant herein named in completing this form because _____

_____
(For example—registrant unable to read and write English, etc.)

_____
(Signature of person who has assisted)

_____
(Occupation of person who has assisted)

_____
(Address of person who has assisted)

_____
(Date)

U.S. GOVERNMENT PRINTING OFFICE : 1967—O-272-574

SELECTIVE SERVICE SYSTEM

Approval Not Required.

ORDER TO REPORT FOR INDUCTION

GOVERNMENT EXHIBIT 167 - 357 W 11 5/21/69

Local Board No. 114
Middlesex County
34 Commonwealth Ave.
West Concord, Mass. 01781
(LOCAL BOARD STAMP)

The President of the United States,

To John Heffron Sisson Jr.,
P. O. Box 457
Greenville, Mississippi 38701

March 10, 1968
(Date of mailing)

SELECTIVE SERVICE NO.			
29	77	16	237

GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report at Local Board No. 114; 34 Commonwealth Avenue, West Concord, Mass.
(Place of reporting)

on April 17, 1968 at 6:45 A. M.
(Date) (Hour)

for forwarding to an Armed Forces Induction Station.

(Member or clerk of Local Board)

IMPORTANT NOTICE

(Read Each Paragraph Carefully)

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF MARRIED, BRING PROOF OF YOUR MARRIAGE. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION, IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

Valid documents are required to substantiate dependency claims in order to receive basic allowance for quarters. Be sure to take the following with you when reporting to the induction station. The documents will be returned to you. (c) FOR LAWFUL WIFE OR LEGITIMATE CHILD UNDER 21 YEARS OF AGE—original, certified copy or photostat of a certified copy of marriage certificate, child's birth certificate, or a public or church record of marriage issued over the signature and seal of the custodian of the church or public records; (b) FOR LEGALLY ADOPTED CHILD—certified court order of adoption; (c) FOR CHILD OF DIVORCED SERVICE MEMBER (Child in custody of person other than claimant)—(1) Certified or photostatic copies of receipts from custodian of child evidencing serviceman's contributions for support, and (2) Divorce decree, court support order or separation order; (d) FOR DEPENDENT PARENT—affidavits establishing that dependency.

Bring your Social Security Account Number Card. If you do not have one, apply at nearest Social Security Administration Office. If you have life insurance, bring a record of the insurance company's address and your policy number. Bring enough clean clothes for 3 days. Bring enough money to last 1 month for personal purchases.

This Local Board will furnish transportation, and meals and lodging when necessary, from the place of reporting to the induction station where you will be examined. If found qualified, you will be inducted into the Armed Forces. If found not qualified, return transportation and meals and lodging when necessary, will be furnished to the place of reporting.

You may be found not qualified for induction. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are not inducted. If employed, inform your employer of this possibility. Your employer can then be prepared to continue your employment if you are not inducted. To protect your right to return to your job if you are not inducted, you must report for work as soon as possible after the completion of your induction examination. You may jeopardize your employment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

Willful failure to report at the place and hour of the day named in this Order subjects the violator to fine and imprisonment. Bring this Order with you when you report.

If you are so far from your own local board that reporting in compliance with this Order will be a serious hardship, go immediately to any local board and make written request for transfer of your delivery for induction, taking this Order with you.

DD Form 252 (Revised 4-22-65) (Previous printings may be used until exhausted.)

☆ U.S. GOVERNMENT PRINTING OFFICE : 1966 O—765-150

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

DEFENDANT'S REQUESTS FOR JURY INSTRUCTIONS

1. *Reasonable Doubt.*

Reasonable doubt is that kind of doubt which would cause you to hesitate in the important matters of your life before you would take action. *Holland* v. *United States*, 348 U.S. 121 (1954).

2. *"Willfully".*

a. When used in a criminal statute, the word "willfully" generally means an act done with a bad purpose. An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime. *Screws* v. *United States*, 325 U.S. 91, 101 (1945), per Douglas, J.

b. The word "willfully" includes some element of evil motive. *Spies* v. *United States*, 317 U.S. 492, 498 (1943).

c. The word "willfully" often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal statute, it generally means an act done with a bad purpose, without justifiable excuse. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act. The defendant's conduct may be unintentional, but you may nevertheless find that it was not prompted by bad faith or evil intent, which the statute makes an element of the offense. *United States* v. *Murdock*, 290 U.S. 389, 394-95 (1933), per Roberts, J.

d. Doing or omitting to do a thing knowingly and willfully implies not only a knowledge of the thing, but a determination with a bad intent to do it, or to omit doing it. The word "willfully", in the ordinary sense in which it is used in statutes, means not merely "voluntarily" but with a bad purpose. It is frequently understood as signifying an evil intent, without justifiable excuse. *Felton* v. *United States*, 96 U.S. 675, 702 (1978), per Field, J., quoting from Chief Justice Shaw in *Com.* v. *Kneeland*, 20 Pick. 220, and from Bishop, Cr. L., Vol. I, sec. 428.

e. The word "willfully" implies a purpose to do wrong. *Potter* v. *United States*, 155 U.S. 438 (1894).

3. *Reasonable Doubt of Willfulness.*

a. If you have a reasonable doubt whether the defendant acted with a bad purpose in refusing to submit to induction into the armed forces, then you must find that the government did not prove the necessary specific intent which is an element of the crime, and you must acquit the defendant.

b. If you have a reasonable doubt whether the defendant acted with evil intent in refusing to submit to induction into the armed forces, then you must find that the government did not prove the necessary specific intent which is an element of the crime, and you must acquit the defendant.

c. If you have a reasonable doubt whether the defendant had the purpose to do wrong in refusing to submit to induction into the armed forces, then you must find that the government did not prove the necessary specific intent which is an element of the crime, and you must acquit the defendant.

4. *Specific Intent/Reasonable Belief.*

a. If you find that in refusing to submit to induction into the armed forces, the defendant reasonably believed that the American military involvement in Vietnam was illegal, then you must find that the defendant did not have the necessary specific intent, that he did not act

"willfully" which is an element of the offense under the statute, and you must acquit the defendant.

b. If you find that in refusing to submit to induction into the armed forces, the defendant believed that the American military involvement in Vietnam was illegal, and that a reasonable man could have that belief, then you must find that the defendant did not have the necessary specific intent, that he did not act "willfully" which is an element of the offense under the statute, and you must acquit the defendant.

c. If you find that in refusing to submit to induction into the armed forces, the defendant reasonably believed that the American military involvement in Vietnam was unjustified, then you must find that the defendant did not have the necessary specific intent, that he did not act "willfully" which is an element of the offense under the statute, and you must acquit the defendant.

d. If you find that in refusing to submit to induction into the armed forces, the defendant reasonably believed that the American military involvement in Vietnam was immoral, then you must find that the defendant did not have the necessary specific intent, that he did not act "willfully" which is an element of the offense under the statute, and you must acquit the defendant.

e. If you find that in refusing to submit to induction into the armed forces, the defendant reasonably believed that the American military involvement in Vietnam was illegal or unjustified or immoral, then you must find that the defendant did not have the necessary specific intent, that he did not act "willfully" which is an element of the offense under the statute, and you must acquit the defendant.

f. If you find that in refusing to submit to induction into the armed forces, the defendant followed the dictates of his conscience, then you must find that the defendant did not have the necessary specific intent, that he did not act "willfully" which is an element of the offense under the statute, and you must acquit the defendant.

5. *Function of the Jury.*

a. It is the function of the jury to acquit or convict, and the jury need not explain nor answer to anyone, including this Court, for any verdict that it renders.

b. It is the function of the jury to acquit or convict. The jury must render its decision on the basis of two kinds of fact: On the one hand, you must weigh the evidence introduced through witnesses, judging their credibility, as well as through documents. That is one kind or one source of facts. The second kind of fact that you must consider in reaching your verdict is the law, the statute which the defendant is charged with violating, as explained to you by me. In short, you must weigh the evidence and judge whether it meets the requirements of the law. But it is your ultimate (function, duty, power, authority) to acquit or convict, and your verdict need not be explained to anyone, including this Court.

Respectfully submitted,

JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

vs.

JOHN HEFFRON SISSON, JR.

MOTION IN ARREST OF JUDGMENT

Pursuant to rule 34 of the Federal Rules of Criminal Procedure, the above-mentioned defendant moves for arrest of judgment in his case on the ground that this Court is without jurisdiction of the offense charged.

Defendant is charged with failure to obey an order that he submit to induction into the Armed Forces. That order ultimately rests on a governmental power to conscript which must be found in Article I and Article II of the United States Constitution. However, the constitutional grant of power to the Executive and/or Legislative branches of the Government cannot reasonably be construed to be a grant of such power for all purposes, e.g. for the purpose of waging a genocidal war. Inasmuchas this Court has held that it does not have, or cannot exercise, jurisdiction to adjudicate the legality of the United States military participation in Vietnam, defendant maintains that this Court also lacks jurisdiction under Article III of the United States Constitution to adjudicate his guilt or innocence of the offense charged; alternatively, defendant maintains that this Court cannot adjudicate his guilt or innocence consistent with the requirements of due process of the Fifth Amendment to the United States Constitution. See generally: Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectics", 66 Harv. L.Rev. 1362, 1380, 1382, 1383 (1953); *Estep* v. *United States*, 327 U.S. 114, 130-132 (1946); *Yakus* v. *United States*, 321 U.S. 414 (1944).

The objection to having this Court enforce the order referred to above without adjudicating its constitutionality is particularly acute because all of the avenues whereby, analytically, defendant might raise the substance of his defense have been foreclosed: (1) defendant cannot qualify as a "conscientious objector" within the meaning of the Military Selective Service Act of 1967, because he is not a pacifist and, in any event, his convictions that the Vietnam war is illegal, immoral and unjust are not based on "religious training and belief"; (2) he has no judicially recognized right under the First Amendment and/or the Ninth Amendment to act in accordance with the dictates of his conscience—he has neither a statutory nor a constitutional right of "conscience"; (3) despite ample historical evidence to the contrary, the constitutional power of the Executive and Legislative Branches to maintain a standing army (President Eisenhower in his farewell address recommended maintaining a 3.5 million man level) has been upheld, including the power to conscript to maintain a standing army, despite the possibility of obtaining necessary manpower through voluntary enlistment by increasing the wages and salaries of military personnel; in short, defendant is unable to successfully challenge the power of the President and Congress to raise an army, as distinct from their power to use that army to fight the Vietnam war; (4) finally, inasmuchas the Court has held that "specific intent" is not an element of the offence, defendant is precluded from defending himself on the ground that his refusal to submit to induction was founded on the reasonable belief that the war violates domestic law and international law, i.e., the Nuremburg principles, and therefore that he had no bad purpose or evil intent or intent to do wrong in refusing to obey the order that he submit to induction.

Defendant acted on the basis of what was best and highest in him, and it cannot be the function of this Court or the function of the criminal process in a civilized society to punish him for this without affording him any opportunity to establish the substance of his defense. Perhaps the most persuasive evidence that this Court lacks

jurisdiction in the circumstance is that, in order to avoid the manifest injustice of punishing defendant as a felon for doing what he and millions like him believe to be right, this Court would have to permit the trial against him to turn into an empty ritual, a hollow mockery, by permitting or encouraging the jurors to disregard the law.

If the justification or lack thereof of the United States military participation in Vietnam is a question which can only be determined by the President and by Congress, it follows that enforcement of governmental orders pursuant to that determination is also the responsibility of the President and Congress—it is possible for such enforcement to occur without reliance on the criminal process, i.e. by withholding fellowships or similar financial benefits from persons who refuse to abide by that determination, or by raising a volunteer army. Under traditional concepts of separation of power, Congress ought not to be allowed to debase the judicial function by making of the Courts rubber stamps for determinations of "political" questions by the coordinate branches of government.

For these reasons, the Court should grant defendant's motion in arrest of judgment.

Respectfully submitted,

JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

AMENDED MOTION IN ARREST OF JUDGMENT

Pursuant to rule 34 of the Federal Rules of Criminal Procedure, the above-named defendant moves for arrest of judgment in his case on the ground that this Court is without jurisdiction of the offense charged. This "Amended Motion in Arrest of Judgment" is submitted in lieu of the "Motion in Arrest of Judgment" previously submitted by the defendant on March 26, 1969.

Defendant was convicted by a jury on March 21, 1969, of having refused to obey an order that he submit to induction into the Armed Forces. The authority for that order ultimately rests on the power of compulsory conscription which must be found, if at all, in Article I and Article II of the United States Constitution. However, a constitutional grant of such power to the executive and/or legislative branches of the government cannot reasonably be construed to be a grant of such power for all purposes, e.g. for the purpose of waging a genocidal war.

Inasmuchas this Court has held that it does not have, or cannot exercise, jurisdiction to adjudicate the legality of the United States military participation in Vietnam, (see the Court's opinions dated November 25 and November 26, 1968, as well as paragraph 2 and 3 of the Court's Order dated December 3, 1968), defendant maintains that this Court also lacks jurisdiction of the subject matter of the offense with which he is charged. If the political question doctrine is viewed as constitutionally required, then under conventional standards of separation of power this Court lacks jurisdiction under Article

III of the United States Constitution to adjudicate the defendant's guilt or innocence of the offense charged. Alternatively, if the political question doctrine rests on prudential considerations, defendant maintains that this Court cannot adjudicate his guilt or innocence consistent with the requirements of due process of the Fifth Amendment to the United States Constitution. See generally: Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectics", 66 Harv. L. Rev. 1362, 1380, 1382, 1383 (1953); *Estep* v. *United States*, 327 U.S. 114, 130-132 (1946); *Yakus* v. *United States*, 321 U.S. 414 (1944).

The objection to having this Court conduct criminal proceedings to "enforce" the order that defendant submit, against his will, to induction into the armed forces without adjudicating the constitutionality of that order is particularly acute because all other avenues whereby, analytically, defendant might raise the substance of his defense have been foreclosed: (1) defendant cannot qualify as a "conscientious objector" within the meaning of the Military Selective Service Act of 1967, because he is not a pacifist and, in any event, his convictions about the illegality, immorality and injustice of the Vietnam war are not based on "religious training and belief" (see paragraph 5 of the Court's Order dated December 3, 1969); (2) defendant claims the right, under the First Amendment and/or the Ninth Amendment, to act in accordance with the dictates of his conscience; this claim of a constitutional right of "conscience" arguably could be translated into a statutory right; however, even if it were desirable to expand, with respect to "religious" objectors, the scope of section 6(j) of the Military Selective Service Act of 1967 by judicial construction to include so-called "selective" conscientious objectors (in order to avoid distinctions which may violate the First Amendment to the United States Constitution), the process of identifying such conscientious objectors would require adjudication of the very issues which this Court has already declared to be political questions, and therefore questions over which it has no jurisdiction—see e.g. 54 Va. L. Rev. 1355, 1374, 1375 (1968); (3) despite ample his-

torical evidence to the contrary, the constitutional power of the executive and legislative branches to conscript for the purpose of maintaining a standing army (President Eisenhower in his farewell address recommended maintenance of a 3.5 million man level) has been upheld, despite the possibility of obtaining necessary manpower through voluntary enlistment by increasing the wages and salaries of military personnel; in short, defendant is unable to successfully challenge the power of the President and Congress to raise an army, as distinct from their power to use that army to fight the Vietnam war; (4) finally, the Court has also held that "specific intent" is not an element of the offense, and defendant is therefore unable to defend himself on the ground that his refusal to submit to induction was founded on the reasonable belief that the war violates domestic law and/or international law, e.g., the Nuremberg principles, and therefore that he had no bad purpose or evil intent or intent to do wrong in refusing to obey the order that he submit to induction.

Defendant acted on the basis of what was best and highest in him, and it cannot be the function of this Court or the function of the criminal process is a civilized, democratic society to punish him for doing so without affording him any opportunity to establish the substance of his defense. Perhaps the most persuasive evidence that this Court lacks jurisdiction, in the circumstances, is that in order to avoid the manifest injustice of punishing defendant as a felon for doing what he and millions like him believe to be right, this Court would have to permit the trial against him to turn into an empty ritual by permitting or encouraging the jurors to disregard the law.

If the justification or lack thereof of the United States military participation in Vietnam is a question which can only be determined by the President and by Congress, it follows that enforcement of governmental orders pursuant to that determination is also the responsibility of the President and Congress—it may be possible for such enforcement to occur without reliance on the criminal process, e.g. by withholding fellowships or similar finan-

cial benefits from persons who refuse to abide by such a determination, or by raising a volunteer army. Congress ought not to be allowed to debase the judicial function by making of the Courts rubber stamps for the determinations of "political" questions made by the coordinate branches of government.

For these reasons, the Court should grant defendant's motion in arrest of judgment.

Respectfully submitted,

JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

OPINION

April 1, 1969

WYZANSKI, Chief Judge

A. *Introduction*

March 21, 1969, in the United States District Court sitting in Boston, a jury returned a verdict that John Heffron Sisson, Jr. was guilty of unlawfully, knowingly, and wilfully having refused to comply with the order of Local Board No. 114 to submit to induction into the armed forces of the United States, in violation of the Military Selective Service Act of 1967. Title 50, Appendix, United States Code, Section 462. 32 Code of Federal Regulations 1632.14.

Pursuant to Rule 34 of the Rules of Criminal Procedure, Sisson on March 28, 1969, filed an amended motion in arrest of judgment. Adequate reference is made to earlier contentions. A new point is also raised: that the judicial power vested in this court by Article III of the United States Constitution does not give jurisdiction to adjudicate the merits of a criminal case in which the court is precluded, by the doctrine of so-called "political questions" or otherwise, from deciding relevant constitutional, domestic, and international law questions raised by defendant. It is said that a trial designed to exclude relevant issues violates the "due process" clause of the Fifth Amendment.

Important as is the new issue, defendant indicated both before and during the trial that he also intended to pre-

serve his older contention that no offense is charged in the indictment because it is laid under a statute, which, as applied to him, violates the provision of the First Amendment that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" and the "due process" clause of the Fifth Amendment.

It would have been better practice to make in the motion in arrest of judgment a more detailed reference to, and repetition of, that earlier contention. But, of course, at every stage the court is required to bear in mind constitutional and jurisdictional issues which have been raised and remain of vital consequence. Furthermore, this court on March 26 provided that until April 3 defendant could file a motion in arrest. No doubt, defendant will seasonably make his motion in arrest even clearer.

This court in this opinion addresses itself not to the new point but to a further considertaion of the never-abandoned issue whether the government can constitutionally require combat service in Vietnam of a person who is conscientiously opposed to American military activities in Vietnam because he believes them immoral and unjust, that belief resting not upon formal religion but upon the deepest convictions and ethical commitments, apart from formal religion, of which a man is capable.

While Sisson has raised and not abandoned other issues, most of them have already been disposed of by earlier rulings in this case, *United States* v. *Sisson*, 294 F. Supp. 511, 515, 520 (D. Mass., 1968). Out of an abundance of caution this court repeats the following rulings already made, of which the first is peculiarly pertinent.

November 25, 1968 this court's opinion held that *under present circumstances*, described in that opinion, *Sisson has the necessary standing to raise the issues he tenders.* See 294 F. Supp. 511, 512-513.

The same opinion held that this court has no jurisdiction to decide the "political question" whether the military actions of the United States in Vietnam require as a constitutional basis a declaration of war by Congress.

November 26, 1968 in a second opinion this court held it has no jurisdiction to decide the "political question"

whether American military operations in Vietnam violate international law. The holding is expanded and clarified in this court's order of December 3, 1968.

That order also ruled that if the Government should prove defendant intentionally refused to comply with a duly authorized order of his draft board to submit to induction then under the act it would not be open to defendant to offer as a statutory excuse that he regarded the war as illegal, immoral, or unjust.

B. *The Facts*

From the transcript of the jury trial and the exhibits then admitted, the facts appear virtually without dispute. Indeed in substance the case arises upon an agreed statement of facts.

The usual preliminaries having been completed, Local Board No. 114, Middlesex County, Massachusetts, on Form 252, executed and mailed to Sisson March 18, 1968 an order to report for induction on April 17, 1968. Sisson received the order. On the scheduled day he reported to the local board and from there went to the Boston induction center, as required. At the Boston center, Sisson, after the officer in charge had painstakingly warned him of the consequences, deliberately refused to take the step forward which is, as he understood, the symbolic act of accepting induction.

The evidence shows that the proceedings were in every respect regular. Sisson has never made complaint that there was any error with respect to his registration, the chronological order in which he was called, his physical, mental, and moral examinations, or any other procedural step.

Sisson does not now and never did claim that he is or was in the narrow statutory sense a religious conscientious objector.

Sisson graduated in 1963 from the Phillips Exeter Academy and in 1967 from Harvard College. He enlisted in the Peace Corps in July 1967, but after training he was, for reasons that have no moral connotations, "deselected" in September 1967. In January 1968 he went

to work as a reporter for *The Southern Courier*, published in Montgomery, Alabama. That paper assigned him to work in Mississippi, where he was when he received the induction order.

The first formal indication in the record that Sisson had conscientious scruples is a letter of February 29, 1968 in which he notified Local Board No. 114 that "I find myself to be conscientiously opposed to service in the Armed Forces. Would you please send me SSS Form No. 150 so that I might make my claim as a conscientious objector." On receiving the form, Sisson concluded that his objection not being religious, within the administrative and statutory definitions incorporated in that form, he was not entitled to have the benefit of the form. He, therefore, did not execute it.

But, although the record shows no earlier formal indication of conscientious objection, Sisson's attitude as a non-religious conscientious objector has had a long history. Sisson himself referred to his moral development, his educational training, his extensive reading of reports about and comments on the Vietnam situation, and the degree to which he had familiarized himself with the U.N. Charter, the charter and judgments of the Nuremberg Tribunal, and other domestic and international matters bearing upon the American involvement in Vietnam.

On the stand Sisson was diffident, perhaps beyond the requirements of modesty. But he revealed sensitiveness, not arrogance or obstinacy. His answers lacked the sharpness that sometimes reflects a prepared mind. He was entirely without eloquence. No line he spoke remains etched in memory. But he fearlessly used his own words, not mouthing formulae from court cases or manuals for draft avoidance.

There is not the slightest basis for impugning Sisson's courage. His attempt to serve in the Peace Corps, and the assignment he took on a Southern newspaper were not acts of cowardice or evasion. Those actions were assumptions of social obligations. They were in the pattern of many conscientious young men who have recently come of age. From his education Sisson knows that his claim of conscientious objection may cost him dearly. Some

will misunderstand his motives. Some will be reluctant to employ him.

Nor was Sisson motivated by purely political considerations. Of course if "political" means that the area of decision involves a judgment as to the conduct of a state, then any decision as to any war is not without some political aspects. But Sisson's table of ultimate values is moral and ethical. It reflects quite as real, pervasive, durable, and commendable a marshalling of priorities as a formal religion. It is just as much a residue of culture, early training, and beliefs shared by companions and family. What another derives from the discipline of a church, Sisson derives from the discipline of conscience.

Thus, Sisson bore the burden of proving by objective evidence that he was sincere. He was as genuinely and profoundly governed by his conscience as would have been a martyr obedient to an orthodox religion.

Sisson's views are not only sincere, but, without necessarily being right, are reasonable. Similar views are held by reasonable men who are qualified experts. The testimony of Professor Richard Falk of Princeton University and Professor Howard Zinn of Boston University is sufficient proof. See also Ralph B. Potter, *New Problems for Conscience in War*, American Society for Christian Ethics, January 19, 1968; *War and Moral Discourse*, John Knox Press, 1969.

C. *Limitation of Issues*

The facts found by the jury and recited above raise many points of law, some presented early in this case, others raised explicitly or inferentially in the amended motion filed in arrest of judgment.

If any one of those points is incontrovertibly sound, the court should so state and probably not give rulings on others. Such additional rulings would be gratuitous and violative of the canon of avoidance of unnecessary constitutional adjudications. Hence if this court were a court of last resort, this court would adopt the prudential principle of striking for the jugular alone.

But this inferior court cannot say that any of the issues is clear. It cannot by ruling on one surely make the others moot. This court's ruling is appealable. Hence any constitutional issue whatsoever which defendant here alleged as a ground for having judgment arrested remains open in an appellate court.

More significantly, at least all those issues which are raised under the First Amendment are so interlocked textually and substantively, that one of those issues cannot properly be considered apart from the others. Sound interpretation of any phrase of the Amendment requires reconciliation both with every other phrase of that Amendment and with the Constitution as a whole.

Therefore, it is meet for this opinion to consider both the broad contention, growing principally out of "the free exercise of" religion phrase, that no statute can require combat service of a conscientious objector whose principles are either religious or akin thereto, and the narrower contention growing principally out of "the establishment" of religion phrase, that the 1967 draft act invalidly discriminates in favor of certain types of religious objectors to the prejudice of Sisson. An appellate court might find it suitable to render its judgment solely on the latter issue. This inferior court, as already explained, is not so conveniently situated. In candor it must be added that this court found it understanding of the narrow issue much clarified by first analyzing, as will be seen, the broad issue.

While this court believes it cannot escape a full survey of the First Amendment issues, the court does not now deem it necessary to address itself to the new contentions in the amended motion, filed March 28 in arrest of judgment. Those contentions as to the judicial power of the United States Courts are of the most serious nature. If defendant's other grounds for his amended motion in arrest of judgment do not prevail in the Supreme Court, that court no doubt will have to rule upon the new contentions with respect to judicial power, or to remand the case to this court for a ruling. But that bridge need not be crossed if this opinion has effectively found another way of crossing the stream.

D. *Exhaustion of Administrative Remedies*

The First Amendment issues are open to Sisson in this and other courts even though Sisson did not raise them before the draft board or in any other step in the administrative process. What Sisson is here doing is challenging the constitutionality of the 1967 Act as applied to him. There was no realistic opportunity to make such a challenge until now. Whatever may be academic theory, no administrative agency, such as a draft board, believes it has power or, practically, would exercise power, to declare unconstitutional the statute under which it operates. Maybe a day will come when an administrative agency's right and duty not to apply an unconstitutional statutory provision are generally acknowledged, practiced and approved. Under present practice the first time a contention of unconstitutionality of a statutory provision may effectively be made is in a court.

Sisson waited until the administrative process was over because he had no choice. Cf. Clark v. Gabriel, 393 U.S. 256, 259 (1968).

This court waited until the jury had given a guilty verdict because only then did the judge have no choice.

In Sisson's case the judges have become the first and the last before whom the constitutional issues can be effectively raised as a matter of law.

E. *The Constitutional Power of Congress to Draft Conscientious Objectors for Combat Duty in a Distant Conflict Not Pursuant to a Declared War*

Indubitably Congress has constitutional power to conscript the generality of persons for military service in time of war. *Selective Draft Law Cases*, 245 U.S. 366 (1918). That is, there is not a constitutional gap, nor a defect of power to conscript in time of war, any more than there is a defect of power to raise an army of volunteers. Daniel Webster's contrary views have been superseded. See *Holmes* v. *U.S.*, 391 U.S. 936, 940 note (1968). His historical reading of the past was better than of the future.

Whether this constitutional power exists in time of peace has been thought by some justices of the Supreme Court to be an open question. See *Holmes* v. *U.S.*, 391 U.S. 936, 938-949 (1968); Hart v. U.S., 391 U.S. 956 (1968); *McArthur* v. *Clifford*, 393 U.S. 1002 (1968). However, this court, until otherwise authoritatively instructed, assumes that Congressional power to conscript for war embraces Congressional power in time of peace to conscript for later possible war service. But the assumption is not fully supported despite what this court indicated in 294 F. Supp. at p. 513, by *Hamilton* v. *University of California*, 293 U.S. 245 (1934). *Hamilton* goes on the narrow ground that the Fourteenth Amendment does not confer "the right to be students in the state university free from the obligation to take military training as one of the conditions of attendance," Thomas Reed Powell, *Conscience and the Constitution* in William T. Hutchinson, Editor, *Democracy and National Unity*, The University of Chicago Press, 1941, p. 15 of the reprint. The opinion of Justice Butler, it is true, proceeded on the premise that the conscription power was the same in peace as in war. But, Justice Cardozo, speaking for himself, Justice Brandeis, and Justice Stone, observed that "There is no occasion at this time to mark the limits of governmental power in the exaction of military service when the nation is at peace." (p. 265)

This court's assumption that Congress has the general power to conscript in time of peace is not dispositive of the specific question whether that general power is subject to some exception or immunity available to a draftee because of a constitutional restriction in favor of individual liberty. See Powell, above, at pp. 6, 18.

However, some have supposed the specific question is foreclosed. At the head of the procession is Judge Learned Hand who a decade ago, before the Vietnam conflict sharpened our focus, announced in the Oliver Wendell Holmes Lectures on *The Bill of Rights*, Harvard University Press, (1958), p. 64, (same book republished with same pagination, Athenaeum Press, 1964), without pausing for a footnote, that "We could, though we do not, lawfully require all citizens to do military service regardless of their religious principles."

No doubt Judge Learned Hand recalled the argument Mr. John W. Davis made in *Macintosh* v. *U.S.*, 283 U.S. 605 (1931), that it is a "fixed principle of our Constitution . . . that a citizen cannot be forced and need not bear arms in a war if he has conscientious religious scruples against doing so." (p. 623) Judge Hand remembered that the argument of Mr. Davis had been rejected by Justice Sutherland, 283 U.S. at pages 623-624, in language quoted by Justice Butler at p. 264 in *Hamilton*:

> "The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, express or implied; but because, and only because, it has accorded with the policy of Congress thus to relieve him . . . [T]he war powers . . . include . . . the power, *in the last extremity*, to compel the armed service of any citizen in the land, without regard to his objections or his views in respect of the justice or morality of the particular war or of war in general." (Emphasis added).

Sweeping as the foregoing quotation seems to be, there are restrictive implications inherent in the use of the phrase "in the last extremity." And while Justice Sutherland does use the comprehensive words "to compel the armed service of any citizen", it is arguable that he was not seeking prematurely to answer a question which a few years later Thomas Reed Powell treated as still undecided, that is "whether a conscientious objector could constitutionally be required to kill." Powell at p. 17.

The sum of the matter is that a careful scholar would conclude in 1969, as Professor Powell did in 1941, that "Notwithstanding all judicial declarations, it has not been actually decided that a conscientious objector, not within any group exempted by Congress, can be put into the front-line trenches or put into the army where certain refusals to obey orders may be punished by death." See Powell, above, at p. 18.

Yet, open as the issue may be, *this Court in the following discussion assumes that a conscientious objector, religious or otherwise, may be conscripted for some kinds*

of service in peace or in war. This court further assumes that in time of declared war or in the defense of the homeland against invasion, all persons may be conscripted even for combat service.

But the precise inquiry this court cannot avoid is whether now Sisson may be compelled to submit to non-justiciable military orders which may require him to render combat service in Vietnam. Cf. *In re Jenison*, 375 U.S. 14 (1963); same case on remand 267 Minn. 136, 125 N.W. (2d) 588 (1964).

Implicit is the problem whether in deciding the issue as to the constitutional claim of a conscientious objector to be exempt from combat service, circumstances alter cases. (See the admittedly distinguishable case of jury duty, *In Re Jenison* above.)

This is not an area of constitutional absolutism. It is an area in which competing claims must be explored, examined, and marshalled with reference to the Constitution as a whole.

There are two main categories of conflicting claims. First, there are both public and private interests in the common defense. Second there are both public and private interests in individual liberty.

Every man, not least the conscientious objector, has an interest in the security of the nation. Dissent is possible only in a society strong enough to repel attack. The conscientious will to resist springs from moral principles. It is likely to seek a new order in the same society, not anarchy or submission to a hostile power. Thus conscience rarely wholly disassociates itself from the defense of the ordered society within which it functions and which it seeks to reform not to reduce to rubble.

In parallel fashion, every man shares and society as a whole shares an interest in the liberty of the conscientious objector, religious or not. The freedom of all depends on the freedom of each. Free men exist only in free societies. Society's own stability and growth, its physical and spiritual prosperity are responsive to the liberties of its citizens, to their deepest insights, to their free choices, "That which opposes also fits".

Those rival categories of claims cannot be mathematically graded. There is no table of weights and measures. Yet there is no insuperable difficulty in distinguishing orders of magnitude.

The sincerely conscientious man, whose principles flow from reflection, education, practice, sensitivity to competing claims, and a search for a meaningful life, always brings impressive credentials. When he honestly believes that he will act wrongly if he kills, his claim obviously has great magnitude. That magnitude is not appreciably lessened if his belief relates not to war in general, but to a particular war or to a particular type of war. Indeed a selective conscientious objector might reflect a more discriminating study of the problem, a more sensitive conscience, and a deeper spiritual understanding.

It is equally plain that when a nation is fighting for its very existence there are public and private interests of great magnitude in conscripting for the common defense all available resources, including manpower for combat.

But a campaign fought with limited forces for limited objects with no likelihood of a battlefront within this country and without a declaration of war is not a claim of comparable magnitude.

Nor is there any suggestion that in present circumstances there is a national need for combat service from Sisson as distinguished from other forms of service by him. The want of magnitude in the national demand for combat service is reflected in the nation's lack of calls for sacrifice in any serious way by civilians.

Before adding up the accounts and striking a balance there are other items deserving notice.

Sisson is not in a formal sense a religious conscientious objector. His claim may seem less weighty than that of one who embraces a creed which recognizes a Supreme Being, and which has as part of its training and discipline opposition to war in any form. It may even seem that the Constitution itself marks a difference because in the First Amendment reference is made to the "free exercise of" "religion", not to the free exercise of conscience. Moreover, Sisson does not meet the 1967 con-

gressional definition of religion. Nor does he meet the dictionary definition of religion.

But that is not the end of the matter. The opinions in *U.S.* v. *Seeger*, 380 U.S. 163 (1965) disclosed wide vistas. The court purported to look only at a particular statute. It piously disclaimed any intent to interpret the Constitution or to examine the limitations which the First and Fifth Amendment place upon Congress. But commentators have not forgotten the Latin tag *pari passu*. See Note *The Conscientious Objector and The First Amendment: There but for the Grace of God*, 34 U. Chi. L. Rev. 79 (1966); James B. White, *Processing Conscientious Objector Claims: A Constitutional Inquiry*, 56 Cal. L. Rev. 652 (1968); Hugh C. Macgill, *Selective Conscientious Objection: Divine Will and Legislative Grace*, 54 Va. L. Rev. 1355 (1968); John Mansfield, *Conscientious Objection—1964 Term*, 1965 Religion and the Public Order 1.

The rationale by which Seeger and his companions on appeal were exempted from combat service under the statute is quite sufficient for Sisson to lay valid claim to be constitutionally exempted from combat service in the Vietnam type of situation.

Duty once commonly appeared as the "stern daughter of the voice of God." Today to many she appears as the stern daughter of the voice of conscience. It is not the ancestry but the authenticity of the sense of duty which creates constitutional legitimacy.

Some suppose that the only reliable conscience is one responsive to a formal religious community of memory and hope. But in *Religion In The Making*, Alfred North Whitehead taught us that "religion is what the individual does with his own solitariness." pp. 16, 47, 58.

Others fear that recognition of individual to perpetrate a fraud. His own word will so often enable him to sustain his burden of proof. Cross-examination will not easily discover his insincerity.

Seeger cut the ground from under that argument. So does experience. Often it is harder to detect a fraudulent adherent to a religious creed than to recognize a sincere moral protestant. See Justice Jackson's dissent

in *U.S.* v. *Ballard*, 322 U.S. 78, 92-95 (1944). We all can discern Thoreau's integrity more quickly than we might detect some churchman's hypocrisy.

The suggestion that courts cannot tell a sincere from an insincere conscientious objector underestimates what the judicial process performs every day. Ever since, in *Edginton* v. *Fitzmaurice* (1882) L.R. 29 Ch. Div. 359, Bowen L.J. quipped that "the state of a man's mind is as much a fact as the state of his digestion", each day courts have applied laws, criminal and civil, which make sincerity the test of liability.

There have been suggestions that to read the Constitution as granting an exemption from combat duty in a foreign campaign will immunize from public regulation all acts or refusals to act dictated by religious or conscientious scruple. Such suggestions fail to note that there is no need to treat, and this court does not treat, religious liberty as an absolute. The most sincere religious or conscientious believer may be validly punished even if in strict pursuance of his creed or principles, he fanatically assassinates an opponent, or practices polygamy, *Reynolds* v. *U.S.*, 98 U.S. 154 (1878), or employs child labor, *Prince* v. *Massachusetts*, 321 U.S. 158 (1944). Religious liberty and liberty of conscience have limits in the face of social demands of a community of fellow citizens. There are, for example, important rival claims of safety, order, health, and decency.

Nor is it true that to recognize liberty of conscience and religious liberty will set up some magic line between nonfeasance and misfeasance. A religiously motivated failure to discharge a public obligation may be as serious a crime as a religiously motivated action in violation of law. We may, argumentatively, assume that one who out of religious or conscientious scruple refuses to pay a general income or property tax, assessed without reference to any particular kind of contemplated expenditure, is civilly and criminally liable, regardless of his sincere belief that he is responding to a divine command not to support the government.

Most important, it does not follow from a judicial decision that Sisson cannot be conscripted to kill in Vietnam

that he cannot be conscripted for non-combat service there or elsewhere.

It would be a poor court indeed that could not discern the small constitutional magnitude of the interest that a person has in avoiding all helpful service whatsoever or in avoiding paying all general taxes whatsoever. His objections, of course, may be sincere. But some sincere objections have greater constitutional magnitude than others.

There are many tasks, technologically or economically related to the prosecution of a war, to which a religious or conscientious objector might be constitutionally assigned. As Justice Cardozo wrote "Never in our history has the notion been accepted, or even, it is believed, advanced, that acts thus indirectly related to service in the camp or field are so tied to the practice of religion as to be exempt, in law or in morals, from regulation by the state." *Hamilton* v. *University of California*, 293 U.S. 245, 267 (1934).

Sisson's case being limited to a claim of conscientious objection to combat service in a foreign campaign, this court holds that the free exercise of religion clause in the First Amendment and the due process clause of the Fifth Amendment prohibit the application of the 1967 draft act to Sisson to require him to render combat service in Vietnam.

The chief reason for reaching this conclusion after examining the competing interests is the magnitude of Sisson's interest in not killing in the Vietnam conflict as against the want of magnitude in the country's present need for him to be so employed.

The statute as here applied creates a clash between law and morality for which no exigency exists, and before, in Justice Sutherland's words, "the last extremity" or anything close to that dire predicament has been glimpsed, or even predicted, or reasonably feared.

When the state through its laws seeks to override reasonable moral commitments it makes a dangerously uncharacteristic choice. The law grows from the deposits of morality. Law and morality are, in turn, debtors and creditors of each other. The law cannot be adequately

enforced by the courts alone, or by courts supported merely by the police and the military. The true secret of legal might lies in the habits of conscientious men disciplining themselves to obey the law they respect without the necessity of judicial and administrative orders. When the law treats a reasonable, conscientious act as a crime it subverts its own power. It invites civil disobedience. It impairs the very habits which nourish and preserve the law.

F. *The Constitutional Power of Congress to Discriminate as It Did in the 1967 Draft Act Between the Draft Status of Sisson as a Conscientious Objector and the Draft Status of Adherents to Certain Types of Religions.*

The Supreme Court may not address itself to the broad issue just decided. Being a court of last resort, it, unlike an inferior court, can confidently rest its judgment upon a narrow issue. Indeed *Seeger* foreshadows exactly that process. So it is incumbent on this court to consider the narrow issue, whether the 1967 Act invalidly discriminates against Sisson as a non-religious conscientious objector.

The draft act now limits "exemption from combat training and service" to one "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form" 50 U.S.C. App. Section 456 (j), commonly cited as Section 6(j) of the Act as amended.

A Quaker, for example, is covered if he claims belief in the ultimate implications of William Penn's teaching. Persons trained in and believing in other religious ways may or may not be covered. A Roman Catholic obedient to the teaching of Thomas Aquinas and Pope John XXIII might distinguish between a just war in which he would fight and an unjust war in which he would not fight. Those who administer the Selective Service System opine that Congress has not allowed exemption to those whose conscientious objection rests on such a distinction. See Lt. Gen. Lewis B. Hershey, *Legal As-*

pects of Selective Service, U.S. Gov. Printing Office, January 1, 1969, pp. 13-14. This court has a more open mind.

However, the administrators and this court both agree that Congress has not provided a conscientious objector status for a person whose claim is admittedly not formally religious.

In this situation Sisson claims that even if the Constitution might not otherwise preclude Congress from drafting him for combat service in Vietnam, the Constitution does preclude Congress from drafting him under the 1967 Act. The reason is that this Act grants conscientious objector status solely to religious conscientious objectors but not to non-religious objectors.

Earlier this opinion noted that it is practical to accord the same status to non-religious conscientious objectors as to religious objectors. Moreover, it is difficult to imagine any ground for a statutory distinction except religious prejudice. In short, in the draft act Congress unconstitutionally discriminated against atheists, agnostics, and men, like Sisson, who, whether they be religious or not, are motivated in their objection to the draft by profound moral beliefs which constitute the central convictions of their beings.

This court, therefore, concludes that in granting to the religious conscientious objector but not to Sisson a special conscientious objector status, the Act, as applied to Sisson, violates the provision of the First Amendment that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." *Torcaso* v. *Watkins*, 367 U.S. 488 (1961) Cf. *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963); *Everson* v. *Board of Education*, 330 U.S. 1, 15-16 (1947).

In the words of Rule 34, the indictment of Sisson "does not charge an offense".

This court's "decision arresting a judgment of conviction for insufficiency of the indictment . . . is based upon the invalidity . . . of the statute upon which the indictment is founded" within the meaning of those phrases as used in 18 U.S.C. Section 3731. *U.S.* v. *Green*, 350 U.S. 415, 416 (1956); *U.S.* v. *Bramblett*, 348 U.S. 503, 504 (1955). Therefore, "an appeal may be taken by and

on behalf of the United States . . . direct to the Supreme Court of the United States."

TO GUARD AGAINST MISUNDERSTANDING, THIS COURT HAS *NOT* RULED THAT:

(1) THE GOVERNMENT HAS NO RIGHT TO CONDUCT VIETNAM OPERATIONS; OR
(2) THE GOVERNMENT IS USING UNLAWFUL METHODS IN VIETNAM; OR
(3) THE GOVERNMENT HAS NO POWER TO CONSCRIPT THE GENERALITY OF MEN FOR COMBAT SERVICE; OR
(4) THE GOVERNMENT IN A DEFENSE OF THE HOMELAND HAS NO POWER TO CONSCRIPT FOR COMBAT SERVICE ANYONE IT SEES FIT; OR
(5) THE GOVERNMENT HAS NO POWER TO CONSCRIPT CONSCIENTIOUS OBJECTORS FOR NON-COMBAT SERVICE.

INDEED THE COURT ASSUMES WITHOUT DECIDING THAT EACH ONE OF THOSE PROPOSITIONS STATES THE EXACT REVERSE OF THE LAW.

ALL THAT THIS COURT DECIDES IS THAT AS A SINCERE CONSCIENTIOUS OBJECTOR SISSON CANNOT CONSTITUTIONALLY BE SUBJECTED TO MILITARY ORDERS (NOT REVIEWABLE IN A UNITED STATES CONSTITUTIONAL COURT) WHICH MAY REQUIRE HIM TO KILL IN THE VIETNAM CONFLICT.

Enter forthwith this decision and this court's order granting defendant Sisson's motion in arrest of judgment.

/s/ Charles Edward Wyzanski, Jr.
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

AMENDMENT TO AMENDED MOTION IN ARREST OF JUDGMENT

Pursuant to the order of the Court entered March 28, 1969 extending until April 3, 1969 the time for defendant in this case to file a motion in arrest of judgment, defendant further amends his "Amended Motion in Arrest of Judgment" previously filed herein under Rule 34 of the Federal Rules of Criminal Procedure.

Defendant reaffirms all of the grounds formerly pressed in connection with his "Motion to Dismiss Indictment" which was filed on October 21, 1968, as elaborated in his "Memorandum of Points and Authorities in Support of Motion to Dismiss Indictment", also filed on October 21, 1968, and in his letter dated November 27, 1968.

In particular, defendant moves that the Court arrest judgment on the ground that the indictment returned against him does not charge an offense because the Military Selective Service Act of 1967, (and therefore the order issued under that Act directing defendant to report for induction into the armed forces,) is unconstitutional in that it violates the "free exercise" and "non-establishment" clauses of the First Amendment to the United States Constitution.

Before his trial, defendant took this position by asserting his "right of conscience" in his "Motion to Dismiss Indictment", at pages 25-28 and 30-39 of his Memorandum in Support to that Motion, in defendant's affidavit of October 21, 1968 which is Exhibit 1 to the Memorandum in Support of the Motion to Dismiss filed on that date, at page 18 of the "Supplemental Memoran-

dum" filed on November 25, 1968, at page 3 of his letter of November 27, 1968, as well as at the time of the informal pre-trial conference held on March 14, 1969, which is memorialized in part in defendant's letter to the Court dated March 17, 1969. Defendant maintained this position during his trial through cross-examination of government witnesses, by offering his own testimony and the testimony of expert witnesses, by moving for a directed verdict of acquittal at the conclusion of all the evidence, and by requesting jury instruction numbered 4.f. And after trial, defendant again reasserted his constitutional right of conscience in moving for arrest of judgment.

As expressed at page 18 of the "Supplemental Memorandum" of November 25, 1968, defendant maintains that compulsory conscription may not be used for the Vietnam conflict, an undeclared war, without violating his right of conscience. The Military Selective Service Act of 1967, as applied to defendant, violates his right to free exercise of religion guaranteed by the First Amendment to the Constitution of the United States. As applied to defendant, the Act also violates the First Amendment prohibition against an establishment of religion by discriminating against atheists, agnostics, and persons who, like defendant, object to the Vietnam war on the basis of conscience, such conscientious objection not resting on formal religion but on moral and ethical values flowing from reflection, education, practice, sensitivity to competing claims, and a search for a meaningful life.

Respectfully submitted,

JOHN G. S. FLYM
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 68-237-W

UNITED STATES OF AMERICA

v.

JOHN HEFFRON SISSON, JR.

NOTICE OF APPEAL

Notice is hereby given that the United States of America, by its attorney, Paul F. Markham, United States Attorney for the District of Massachusetts, pursuant to Rule 34 of the Federal Rules of Criminal Procedure, appeals to the Supreme Court of the United States from the decision and the granting of defendant's motion in arrest of judgment herein by the United States District Court for the District of Massachusetts on April 1, 1969.

PAUL F. MARKHAM
United States Attorney

By: /s/ Stanislaw R. J. Suchecki
STANISLAW R. J. SUCHECKI
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

SUFFOLK, SS.

Boston, Massachusetts
April 23, 1969

I, Stanislaw R. J. Suchecki, Assistant U. S. Attorney, hereby certify that I have this day served a copy of the within Notice of Appeal upon John G. S. Flym, Esquire, counsel for the defendant, by mailing same to him at Flym & Zalkind, 148 State Street, Boston, Massachusetts, in a franked official envelope.

/s/ Stanislaw R. J. Suchecki
STANISLAW R. J. SUCHECKI
Assistant U. S. Attorney

SUPREME COURT OF THE UNITED STATES

No. 305, October Term, 1969

UNITED STATES, APPELLANT

v.

JOHN HEFFRON SISSON, JR.

APPEAL from the United States District Court for the District of Massachusetts.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. This case is placed on the summary calendar and set for oral argument with No. 76 in which certiorari was granted today. In addition to the questions presented on the merits, counsel are requested to discuss in their briefs and oral arguments, not only the issue of jurisdiction under the "arresting a judgment" subdivision of 18 U.S.C. § 3731, but also the questions of whether jurisdiction exists under either the "motion in bar" subdivision or the "decision . . . setting aside or dismissing" subdivision of 18 U.S.C. § 3731.

October 13, 1969

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 368514 317